

**FAIRFAX COUNTY  
BOARD OF SUPERVISORS  
January 12, 2016**

**AGENDA**

- 8:30 Human Trafficking Awareness Month Reception, The Forum
- 9:30 Presentations
- 10:30 Board Organization and Appointments – Various Regional and Internal Boards and Commissions
- 10:40 Board Appointments to Citizen Boards, Authorities, Commissions, and Advisory Groups
- 10:50 Items Presented by the County Executive

**ADMINISTRATIVE  
ITEMS**

- 1 Authorization to Advertise a Public Hearing to Consider Adopting an Ordinance Expanding the Greenway Downs Residential Permit Parking District, District 13 (Providence District)
- 2 Authorization to Advertise a Public Hearing to Consider Adopting an Ordinance Expanding the West Springfield Residential Permit Parking District, District 7 (Springfield District)
- 3 Authorization to Advertise a Public Hearing to Establish Parking Restrictions on Hamaker Court (Providence District)
- 4 Authorization to Advertise a Public Hearing to Establish Parking Restrictions on Mariah Court (Sully District)
- 5 Authorization for the Fairfax County Fire and Rescue Department to Apply for and Accept Grant Funding from the U.S. Department of Homeland Security Grant for the Assistance to Firefighters (AFG) Grant
- 6 Extension of Review Period for 2232 Applications (Hunter Mill, Mount Vernon, and Springfield Districts)
- 7 Additional Time to Commence Construction for Special Exception SE 2012-PR-005, Arlington Boulevard Development, LLC (Providence District)
- 8 Additional Time to Commence Construction for Special Exception SE 2011-MA-001, Homan Solemaninejad (Mason District)

**FAIRFAX COUNTY  
BOARD OF SUPERVISORS  
January 12, 2016**

**ADMINISTRATIVE  
ITEMS  
(Continued)**

- 9 Supplemental Appropriation Resolution AS 16152 for the Fire and Rescue Department to Accept Grant Funding from the 2015 State Homeland Security Grant Program Through the United States Department of Homeland Security
- 10 Streets into the Secondary System (Dranesville and Hunter Mill Districts)

**ACTION ITEMS**

- 1 Approval of the Board of Supervisors' Meeting Schedule for Calendar Year 2016 and Authorization for the Chairman to Postpone a Scheduled Meeting in the Event of Weather or Other Hazardous Conditions
- 2 Appointment of Members to the Fairfax County Solid Waste Authority
- 3 Approval of a Parking Reduction for Reston Heights (Hunter Mill District)
- 4 Approval of the Project Agreement Between the Virginia Department of Rail and Public Transportation (DRPT) and Fairfax County for Funding the Route 1 Bus Rapid Transit Design (Lee and Mount Vernon Districts)
- 5 Approval of Standard Project Agreement with the Virginia Department of Transportation for the Springfield CBC Commuter Parking Garage Project (Lee District)
- 6 Authorization for the Expenditure of Funds for the Purchase of Bikeshare Equipment and Implementation of Bikeshare Program (Hunter Mill and Providence Districts)
- 7 Approval of an Amendment to the Amended and Restated Lease with Fairfax Corner Mixed Use, L.C. to Expand the Acceptable Uses on County Property and Add Termination Language (Braddock District)

**INFORMATION  
ITEMS**

- 1 Contract Award – Consulting and Related Software and Systems Support for Development and Maintenance of a Northern Virginia NG9-1-1 Spatial Interface Dataset

**FAIRFAX COUNTY  
BOARD OF SUPERVISORS  
January 12, 2016**

**INFORMATION  
ITEMS  
(Continued)**

2 Planning Commission Action on Application 2232-V15-I,  
Huntington Levee

11:00 Matters Presented by Board Members

11:50 Closed Session

**PUBLIC  
HEARINGS**

3:00 Annual Meeting of the Fairfax County Solid Waste Authority

3:00 Public Hearing on SEA 83-V-083 (SEJ Asset Management and  
Investment Company) (Mount Vernon District)

3:00 Public Hearing on RZ 2015-SP-003 (Christopher Land, LLC)  
(Springfield District)

3:00 Public Hearing on RZ 2015-SP-004 (Christopher Land, LLC)  
(Springfield District)

3:00 Public Hearing to Approve a Real Estate Exchange Agreement  
Between the Board of Supervisors and AvalonBay Communities,  
Inc. ("AvalonBay") and to Approve the Purchase of Property from  
5827 Columbia Pike Associates, LLC, an Affiliate of Landmark  
Atlantic, Inc. ("Landmark") (Mason District)

3:30 Public Hearing on SE 2014-MV-051 (Testey Hamdael dba  
Wonderful Child Care) (Mount Vernon District)

3:30 Public Hearing on AR 2006-SP-002 (George F. and Susan M.  
Schulz) (Springfield District)

3:30 Public Hearing on SE 2014-PR-067 (Konstantin E. Panov and  
Alla Davidova DBA The Butterfly Effect, Inc.) (Providence  
District)

3:30 Public Hearing on SEA 87-L-012-02 (R Joun Enterprise LLC,  
Roland Joun, Trustee and Maria Joun, Trustee) (Lee District)

4:00 Public Hearing on SEA 84-M-012-02 (Quan Q. Nguyen and  
Ngan T. Nguyen) (Mason District)

**FAIRFAX COUNTY  
BOARD OF SUPERVISORS  
January 12, 2016**

**PUBLIC  
HEARINGS  
(Continued)**

4:00		Public Hearing on Spot Blight Abatement Ordinance for 3506 Elmwood Drive, Alexandria, VA 22303 (Lee District)
4:00		Public Hearing on a Proposal to Abandon Part of Sanger Street (Mount Vernon District)
4:00		Public Hearing on Revisions to County's Three Retirement System Ordinances
4:30	<b>To be deferred</b>	Public Hearing on SE 2015-MV-003 (First Years Learning Center LLC / Claudia Tramontana) (Mount Vernon District)
4:30		Public Hearing on RZ 2010-PR-022 (TMG Solutions Plaza Land, L.P.) (Providence District)
4:30		Public Hearing on RZ 2014-MA-011 (Spectrum Development, LLC) (Mason District)
4:30		Public Hearing on SE 2014-MA-013 (Spectrum Development, LLC) (Mason District)
4:30		Public Hearing to Consider Parking Restrictions on Port Royal Road, Woodruff Court, Forbes Place (Braddock District)
5:00		Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of the Huntington Levee (Mount Vernon District)





# *Fairfax County, Virginia*

## ***BOARD OF SUPERVISORS***

### ***AGENDA***

**Tuesday**  
**January 12, 2016**

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9:30 a.m.

Presentation of the 2015 Achievement Awards by the Virginia Association of Counties recognizing exceptional Fairfax County Government programs for their innovation.

#### **PRESENTATIONS**

##### **SPORTS/SCHOOLS**

- CERTIFICATE – To recognize the Lake Braddock Secondary School Girls and Boys Cross Country Teams for winning the Virginia 6A state championships. Requested by Supervisors Cook and Herrity.

##### **DESIGNATIONS**

- PROCLAMATION – To designate January 2016 as Human Trafficking Awareness Month in Fairfax County. Requested by Chairman Bulova and Supervisor Herrity.

##### **STAFF:**

Tony Castrilli, Director, Office of Public Affairs  
Bill Miller, Office of Public Affairs

Board Agenda Item  
January 12, 2016

10:30 a.m.

Board Organization and Appointments of Board Members to Various Regional and Internal Boards and Committees

ENCLOSED DOCUMENTS:

Attachment 1 - Listing of Interjurisdictional Committees and Inter- and Intra-Governmental Boards and Committees for Calendar Year 2016

STAFF:

Catherine A. Chianese, Assistant County Executive and Clerk to the Board of Supervisors

**INTERJURISDICTIONAL COMMITTEES AND INTER- AND INTRA-  
GOVERNMENTAL BOARDS AND COMMITTEES FOR CALENDAR  
YEAR 2016**

**INTERJURISDICTIONAL COMMITTEES**

**ALEXANDRIA**

**ARLINGTON**

**DISTRICT OF COLUMBIA**

**FAIRFAX CITY**

**FALLS CHURCH**

**FORT BELVOIR (Board of Advisors/Base Realignment and  
Closure)**

**HERNDON**

**LOUDOUN COUNTY**

**PRINCE WILLIAM**

**VIENNA**

**INTERGOVERNMENTAL BOARDS AND COMMITTEES**  
(including Federal and State)

**COMMUNITY CRIMINAL JUSTICE BOARD**

**METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS  
(COG)**

**COG BOARD OF DIRECTORS**

**COG METROPOLITAN WASHINGTON AIR QUALITY  
COMMITTEE**

**COG CHESAPEAKE BAY AND WATER RESOURCES  
POLICY COMMITTEE**

**COG CLIMATE, ENERGY AND ENVIRONMENTAL  
POLICY COMMITTEE**

**COG EMERGENCY PREPAREDNESS COUNCIL**

**COG HUMAN SERVICES AND PUBLIC SAFETY  
COMMITTEE**

**COG REGION FORWARD COMMITTEE**

**COG TASK FORCE ON REGIONAL WATER SUPPLY  
ISSUES**

**COG NATIONAL CAPITAL REGION TRANSPORTATION  
PLANNING BOARD**

**FAIRFAX PARTNERSHIP FOR YOUTH, INCORPORATED**

**GEORGE MASON UNIVERSITY FAIRFAX CAMPUS ADVISORY  
BOARD**

**INOVA HEALTH CARE SERVICES BOARD**

**INOVA HEALTH SYSTEMS BOARD**

**NORTHERN VIRGINIA REGIONAL COMMISSION (NVRC)**

**NORTHERN VIRGINIA TRANSPORTATION COMMISSION (NVTC)**  
(including WMATA and VRE Representatives)

**PHASE I DULLES RAIL TRANSPORTATION IMPROVEMENT  
DISTRICT COMMISSION**

**PHASE II DULLES RAIL TRANSPORTATION IMPROVEMENT  
DISTRICT COMMISSION**

**POTOMAC WATERSHED ROUNDTABLE**

**ROUTE 28 HIGHWAY TRANSPORTATION IMPROVEMENT DISTRICT  
COMMISSION**

**VACo BOARD OF DIRECTORS (REGIONAL DIRECTORS)**

(Recommendations. The Board of Supervisors makes recommendations to VACo for consideration.)

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY  
(WMATA)**

(Appointed by NVTC. The Board of Supervisors makes recommendations for consideration.)

**INTRAGOVERNMENTAL AND OTHER COMMITTEES**

**50+ COMMITTEE**

(Committee of the Whole)

**AUDIT COMMITTEE**

**BOARD PROCEDURES COMMITTEE**

**BUDGET POLICY COMMITTEE**  
(Committee of the Whole)

**COMMUNITY REVITALIZATION AND REINVESTMENT COMMITTEE**  
(Committee of the Whole)

**DEVELOPMENT PROCESS COMMITTEE**  
(Committee of the Whole)

**ECONOMIC ADVISORY COMMITTEE**  
(Committee of the Whole)

**ENVIRONMENTAL COMMITTEE**  
(Committee of the Whole)

**HOUSING AND COMMUNITY DEVELOPMENT COMMITTEE**  
(Committee of the Whole)

**HUMAN SERVICES COMMITTEE**  
(Committee of the Whole)

**INFORMATION TECHNOLOGY COMMITTEE**  
(Committee of the Whole)

**LEGISLATIVE COMMITTEE**  
(Committee of the Whole)

**PERSONNEL AND REORGANIZATION COMMITTEE**  
(Committee of the Whole)

**PUBLIC SAFETY COMMITTEE**  
(Committee of the Whole)

**TRANSPORTATION COMMITTEE**  
(Committee of the Whole)



Board Agenda Item  
January 12, 2016

10:40 a.m.

Board Appointments to Citizen Boards, Authorities, Commissions, and Advisory Groups

ENCLOSED DOCUMENTS:

Attachment 1: Appointments to be heard January 12, 2016  
(An updated list will be distributed at the Board meeting.)

STAFF:

Catherine A. Chianese, Assistant County Executive and Clerk to the Board of Supervisors

January 12, 2016

**NOTE: A revised list will be distributed immediately prior to the Board meeting.**

**APPOINTMENTS TO BE HEARD JANUARY 12, 2016**  
**(ENCOMPASSING VACANCIES PROJECTED THROUGH JANUARY 31, 2016)**  
(Unless otherwise noted, members are eligible for reappointment)

**A. HEATH ONTHANK MEMORIAL AWARD SELECTION COMMITTEE**  
**(1 year)**

<b><u>Incumbent History</u></b>	<b><u>Requirement</u></b>	<b><u>Nominee</u></b>	<b><u>Supervisor</u></b>	<b><u>District</u></b>
Clifford L. Fields (Appointed 1/96-1/03 by Hanley; 1/04-1/08 by Connolly, 2/09- 1/15 by Bulova) Term exp. 1/16	At-Large Chairman's Representative		Bulova	At-Large Chairman's
Jane W. Gwinn (Appointed 2/04-1/09 by Bulova; 1/10-1/15 by Cook) Term exp. 1/16	Braddock District Representative	<b>Jane W. Gwinn</b>	Cook	Braddock
Kerrie Wilson Appointed 1/10-1/15 by Foust) Term exp. 1/16	Dranesville District Representative		Foust	Dranesville
Ronald Copeland (Appointed 1/05-1/15 by Hudgins) Term exp. 1/16	Hunter Mill District Representative		Hudgins	Hunter Mill

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**A. HEATH ONTHANK MEMORIAL AWARD SELECTION COMMITTEE****(1 year)**

Continued

<b><u>Incumbent History</u></b>	<b><u>Requirement</u></b>	<b><u>Nominee</u></b>	<b><u>Supervisor</u></b>	<b><u>District</u></b>
Joseph Blackwell (Appointed 1/06-1/08 by Kauffman, 1/09- 1/15 by McKay) Term exp. 1/16	Lee District Representative		McKay	Lee
Eileen J. Garnett (Appointed 1/03-1/15 by Gross) Term exp. 1/16	Mason District Representative		Gross	Mason
VACANT (Formerly held by Charles T. Coyle; appointed 2/13-6/14 by Hyland) Term exp. 1/15 <i>Resigned</i>	Mount Vernon District Representative		Storck	Mount Vernon
Ernestine Heastie (Appointed 2/04-1/15 by Smyth) Term exp. 1/16	Providence District Representative		Smyth	Providence
Philip E. Rosenthal (Appointed 1/92-2/08 by McConnell, 1/09- 1/15 by Herrity) Term exp. 1/16	Springfield District Representative	<b>Philip E. Rosenthal</b>	Herrity	Springfield

**ADVISORY SOCIAL SERVICES BOARD**  
(4 years – limited to 2 full consecutive terms)

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Elizabeth D'Alelio; appointed 12/09-9/13 by Cook) Term exp. 9/17 <i>Resigned</i>	Braddock District Representative		Cook	Braddock
VACANT (Formerly held by Margaret Osborne; appointed 12/14 by McKay) Term exp. 9/16 <i>Resigned</i>	Lee District Representative		McKay	Lee
VACANT (Formerly held by Sydney Stakley; appointed 6/07-9/13 by Smyth) Term exp. 9/17 <i>Resigned</i>	Providence District Representative		Smyth	Providence

**AFFORDABLE DWELLING UNIT ADVISORY BOARD (4 years)**

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Arthur R. Genuario; appointed 4/96-5/12 by Hyland) Term exp. 9/13 <i>Resigned</i>	Builder (Single Family) Representative		By Any Supervisor	At-Large

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**AFFORDABLE DWELLING UNIT ADVISORY BOARD (4 years)**

continued

<b><u>Incumbent History</u></b>	<b><u>Requirement</u></b>	<b><u>Nominee</u></b>	<b><u>Supervisor</u></b>	<b><u>District</u></b>
VACANT (Formerly held by Thor Vue; appointed 3/14 by Herrity) Term exp. 5/18 <i>Resigned</i>	Citizen Representative	<b>Paul H. Stanford</b> (Bulova)	By Any Supervisor	At-Large
VACANT (Formerly held by James Francis Carey; appointed 2/95-5/02 by Hanley; 5/06 by Connolly) Term exp. 5/10 <i>Resigned</i>	Lending Institution Representative		By Any Supervisor	At-Large

**AIRPORTS ADVISORY COMMITTEE (3 years)**

<b><u>Incumbent History</u></b>	<b><u>Requirement</u></b>	<b><u>Nominee</u></b>	<b><u>Supervisor</u></b>	<b><u>District</u></b>
Joshua D. Foley (Appointed 2/13 by Cook) Term exp. 1/16	Braddock District Representative		Cook	Braddock
Francine De. Ferreire Kemp (Appointed 1/13 by Foust) Term exp. 1/16	Dranesville District Representative		Foust	Dranesville
George Page (Appointed 1/05-1/13 by Hudgins) Term exp. 1/16	Hunter Mill Business Representative		Hudgins	Hunter Mill

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**AIRPORTS ADVISORY COMMITTEE (3 years)**  
 continued

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Samuel E. Thornton (Appointed 2/01-1/07 by Kauffman; 1/10- 1/13 by McKay) Term exp. 1/16	Lee District Representative		McKay	Lee
VACANT (Formerly held by Robert A. Peter; appointed 2/09-1/13 by Smyth) Term exp. 1/16 <i>Resigned</i>	Providence District Representative		Smyth	Providence
David Skiles (Appointed 9/10-1/13 by Herrity) Term exp. 1/16	Springfield District Representative	<b>David Skiles</b>	Herrity	Springfield

**ALCOHOL SAFETY ACTION PROGRAM LOCAL POLICY BOARD (ASAP)**  
**(3 years)**

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Austin Ford; appointed 3/14 by Bulova) Term exp. 8/15 <i>Resigned</i>	At-Large #4 Representative		By Any Supervisor	At-Large

**ANIMAL SERVICES ADVISORY COMMISSION (2 years)**

[Note: In addition to attendance at Commission meetings, members shall volunteer at least 24 hours per year in some capacity for the Animal Services Division.]

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Barbara Hyde; appointed 9/13-9/14 by Gross) Term exp. 2/16 <i>Resigned</i>	Mason District Representative		Gross	Mason

**ARCHITECTURAL REVIEW BOARD (3 years)**

[NOTE: Members shall be appointed by the Board of Supervisors as follows: at least two (2) members shall be certified architects; one (1) landscape architect authorized to practice in Virginia; one (1) lawyer with membership in the Virginia Bar; six (6) other members shall be drawn from the ranks of related professional groups such as archaeologists, historians, lawyers, and real estate brokers.]

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Susan W. Notkins (Appointed 11/96- 9/03 by Hanley; 9/06 by Connolly; 10/09- 10/12 by Bulova) Term exp. 9/15 <i>Architect</i>	Related Professional Group #3 Representative		By Any Supervisor	At-Large

<b>ATHLETIC COUNCIL (2 years)</b>
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<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Eric T. Sohn (Appointed 4/10-11/13 by Herrity) Term exp. 11/15	Diversity-At-Large Alternate Representative	<b>Eric T. Sohn</b> (Herrity)	By Any Supervisor	At-Large
Clement Chan (Appointed 12/09- 12/13 by Bulova) Term exp. 12/15	Diversity-At-Large Principal Representative		By Any Supervisor	At-Large
Terry Adams (Appointed 11/11-7/13 by Gross) Term exp. 6/15	Mason District Alternate Representative		Gross	Mason
VACANT (Formerly held by David Lacey; appointed 2/99-3/15 by Frey) Term exp. 3/17 <i>Resigned</i>	Sully District Principal Representative		Smith	Sully

<b>AUDIT COMMITTEE (2 years)</b>
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<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Christopher Wade (Appointed 1/12-1/14 by Bulova) Term exp. 1/16	At-Large #1 Representative		By Any Supervisor	At-Large
Michael J. Hershman (Appointed 1/96-1/02 by Hanley; 1/04-1/08 by Connolly; 1/10- 1/14 by Bulova) Term exp. 1/16	At-Large #2 Representative		By Any Supervisor	At-Large



**BOARD OF BUILDING AND FIRE PREVENTION CODE APPEALS (4 years)**

(No official, technical assistant, inspector or other employee of the DPWES, DPZ, or FR shall serve as a member of the board.)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
John B. Scott (Appointed 2/08-2/11 by Frey) Term exp. 2/15	Alternate #3 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Susan Kim Harris; appointed 5/09-2/11 by Hudgins) Term exp. 2/15 <i>Resigned</i>	Alternate #4 Representative		By Any Supervisor	At-Large
Matthew Arnold (Appointed 1/05-2/07 by DuBois; 2/11 by Foust) Term exp. 2/15	Design Professional #2 Representative		By Any Supervisor	At-Large

**BOARD OF EQUALIZATION OF REAL ESTATE ASSESSMENTS (BOE)  
(2 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Joseph Blackwell (Appointed 2/05-1/08 by Kauffman; 12/09- 12/13 by McKay) Term exp. 12/15	At-Large #2 Representative		By Any Supervisor	At-Large
Robert Mansker (Appointed 9/06-2/15 by Gross) Term exp. 12/15	At-Large #3 Representative	<b>Robert Mansker</b> (Gross)	By Any Supervisor	At-Large
John M. Yeatman (Appointed 3/05-1/08 by Connolly; 1/09- 11/13 by Bulova) Term exp. 12/15	Professional #1 Representative	<b>John M. Yeatman</b> (Bulova)	By Any Supervisor	At-Large

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**BOARD OF EQUALIZATION OF REAL ESTATE ASSESSMENTS (BOE)****(2 years)**

continued

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Ryan Davis (Appointed 2/05- 12/05 by McConnell; 2/08-11/13 by Herrity) Term exp. 12/15	Professional #2 Representative	<b>Ryan Davis</b> (Herrity)	By Any Supervisor	At-Large

**CELEBRATE FAIRFAX, INC. BOARD OF DIRECTORS****(2 years – limited to 3 consecutive terms)**

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Jill Patrick (Appointed 9/09-9/14 by Gross) Term exp. 9/15 <i>Not eligible for reappointment</i>	At-Large #3 Representative		By Any Supervisor	At-Large

**CHESAPEAKE BAY PRESERVATION ORDINANCE****EXCEPTION REVIEW COMMITTEE (4 years)**

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Stephen Kirby; appointed 12/03-1/08 by Kauffman; 9/11 by McKay) Term exp. 9/15 <i>Resigned</i>	Lee District Representative		McKay	Lee

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**CHESAPEAKE BAY PRESERVATION ORDINANCE  
EXCEPTION REVIEW COMMITTEE (4 years)**  
Continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Brian Loo; appointed 7/12 by Smyth) Term exp. 9/15 <i>Resigned</i>	Providence District Representative		Smyth	Providence
VACANT (Formerly held by Kanthan Siva; appointed 1/13 by Frey) Term exp. 9/15 <i>Resigned</i>	Sully District Representative		Smith	Sully

**CHILD CARE ADVISORY COUNCIL (2 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Pamela Nilsen; appointed 6/13-9/13 by McKay) Term exp. 9/15 <i>Resigned</i>	Lee District Representative		McKay	Lee
VACANT (Formerly held by Eric Rardin; appointed 4/13 by Hyland) Term exp. 9/15 <i>Resigned</i>	Mount Vernon District Representative		Storck	Mount Vernon

**CIVIL SERVICE COMMISSION (2 years)**

[NOTE: The Commission shall include at least 3 members who are male, 3 members who are female, and 3 members who are from a member of a minority group.]

Current Membership: Males - 9      Females – 3      Minorities: 5

<b><u>Incumbent History</u></b>	<b><u>Requirement</u></b>	<b><u>Nominee</u></b>	<b><u>Supervisor</u></b>	<b><u>District</u></b>
Audrey F. Morton (Appointed 2/94 by Davis; 11/97-12/13 by Frey) Term exp. 12/15	At-Large #1 Representative		By Any Supervisor	At-Large
Rosemarie Annunziata (Appointed 10/05-1/08 by Connolly; 12/09- 1/14 by Bulova) Term exp. 12/15	At-Large #3 Representative		By Any Supervisor	At-Large
Jason Fong (Appointed 1/00 by Hanley; 2/04-1/08 by Connolly; 12/09-11/13 by Bulova) Term exp. 12/15	At-Large #4 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Robert E. Frye, Sr.; appointed 1/05-1/08 by Connolly; 12/09- 11/13 by Bulova) Term exp. 12/15 <i>Resigned</i>	At-Large #5 Representative		By Any Supervisor	At-Large
Thomas Garnett, Jr. (Appointed 10/05-1/08 by Kauffman; 12/09- 12/13 by McKay) Term exp. 12/15	At-Large #6 Representative		By Any Supervisor	At-Large
Patrick Morrison (Appointed 10/05- 11/13 by Bulova) Term exp. 12/15	At-Large #7 Representative		By Any Supervisor	At-Large

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**CIVIL SERVICE COMMISSION (2 years)**

continued

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Broderick C. Dunn (Appointed 1/14 by Cook) Term exp. 12/15	At-Large #8 Representative	<b>Broderick C. Dunn</b> (Cook)	By Any Supervisor	At-Large
Lee E. Helfrich (Appointed 2/14 by Gross) Term exp. 12/15	At-Large #9 Representative	<b>Lee E. Helfrich</b> (Gross)	By Any Supervisor	At-Large
John C. Harris, Jr. (Appointed 10/05-11/13 by Hyland) Term exp. 12/15	At-Large #10 Representative		By Any Supervisor	At-Large
Herbert C. Kemp (Appointed 9/13-11/13 by Foust) Term exp. 12/15	At-Large #11 Representative		By Any Supervisor	At-Large
John Townes (Appointed 11/05-1/08 by McConnell; 12/09-11/13 by Herrity) Term exp. 12/15	At-Large #12 Representative	<b>John Townes</b> (Herrity)	By Any Supervisor	At-Large

**COMMISSION FOR WOMEN (3 years)**

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Julia Boone; appointed 2/13 by Hudgins) Term exp. 10/15 <i>Resigned</i>	Hunter Mill District Representative		Hudgins	Hunter Mill

<p align="center"><b>COMMISSION ON AGING (2 years)</b></p>
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<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Denton Urban Kent; Appointed 9/14 by Gross) Term exp. 5/16 <i>Resigned</i>	Mason District Representative		Gross	Mason

<p align="center"><b>COMMISSION ON ORGAN AND TISSUE DONATION AND TRANSPLANTATION (4 years)</b></p>
--

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Karl J. Simon (Appointed 1/97 by Dix; 1/00-1/12 by Hudgins) Term exp. 1/16	Hunter Mill District Representative		Hudgins	Hunter Mill
VACANT (Formerly held by Benjamin Gibson; appointed 4/11 by McKay) Term exp. 1/15 <i>Resigned</i>	Lee District Representative		McKay	Lee
Norma Jean Young (Appointed 1/09-1/12 by Gross) Term exp. 1/16	Mason District Representative	<b>Norma Jean Young</b>	Gross	Mason
VACANT (Formerly held by Carmen A. Cintron; appointed 2/13 by Hyland) Term exp. 1/15 <i>Resigned</i>	Mount Vernon District Representative		Storck	Mount Vernon

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**COMMISSION ON ORGAN AND TISSUE DONATION AND TRANSPLANTATION**  
**(4 years)**  
 continued

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by William Stephens; appointed 9/02-1/03 by McConnell; 1/07-1/11 by Herrity) Term exp. 1/15 <i>Resigned</i>	Springfield District Representative		Herrity	Springfield
Dorothy O'Rourke (Appointed 10/06-1/12 by Frey) Term exp. 1/16	Sully District Representative		Smith	Sully

**COMMUNITY ACTION ADVISORY BOARD (CAAB)**  
**(3 years)**

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Jay Hilbert; appointed 7/12-2/13 by Frey) Term exp. 2/15 <i>Resigned</i>	Sully District Representative		Smith	Sully

**CONFIRMATION NEEDED:**

- Ms. Valerie C. Cuffee as the George Mason University Representative

**CONSUMER PROTECTION COMMISSION  
(3 years)**

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Jason M. Chung; appointed 2/13 by Frey) Term exp. 7/15 <i>Resigned</i>	Fairfax County Resident #7 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Leah Durant; appointed 6/13 by Herrity) Term exp. 7/15 <i>Resigned</i>	Fairfax County Resident #12 Representative		By Any Supervisor	At-Large

**CRIMINAL JUSTICE ADVISORY BOARD (CJAB) (3 years)**

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Marc Greidinger; appointed 4/13 by Cook) Term exp. 11/15 <i>Resigned</i>	Braddock District Representative	<b>Frank Gallagher</b>	Cook	Braddock
Richard W. Nagel (Appointed 1/10-2/13 by Foust) Term exp. 11/15	Dranesville District Representative		Foust	Dranesville

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**CRIMINAL JUSTICE ADVISORY BOARD (CJAB) (3 years)**

Continued

<b><u>Incumbent History</u></b>	<b><u>Requirement</u></b>	<b><u>Nominee</u></b>	<b><u>Supervisor</u></b>	<b><u>District</u></b>
VACANT (Formerly held by Joseph A. Jay, appointed 11/06 by McConnell; 9/09-9/12 by Herrity) Term exp. 8/15 <i>Resigned</i>	Springfield District Representative		Herrity	Springfield
VACANT (Formerly held by Janice Shafer; appointed 9/14 by Frey) Term exp. 4/16 <i>Resigned</i>	Sully District Representative		Smith	Sully

**DULLES RAIL TRANSPORTATION IMPROVEMENT  
DISTRICT ADVISORY BOARD, PHASE II - (4 years)**

<b><u>Incumbent History</u></b>	<b><u>Requirement</u></b>	<b><u>Nominee</u></b>	<b><u>Supervisor</u></b>	<b><u>District</u></b>
Robert J. Elliott (Appointed 4/13 by Bulova) Term exp. 1/16	BOS At-Large #4 Representative		By Any Supervisor	At-Large
Jeffrey T. Chod (Appointed 1/14 by Bulova) Term exp. 1/16	BOS At-Large #5 Representative		By Any Supervisor	At-Large
Gregory W. Trimmer (Appointed 1/12 by Bulova) Term exp. 1/16	BOS At-Large #6 Representative		By Any Supervisor	At-Large

**CONFIRMATION NEEDED:**

- Mr. Randy Jaegle as the Town of Herndon Representative

<b>ENGINEERING STANDARDS REVIEW COMMITTEE (3 years)</b>
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<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by James M. Dougherty; appointed 9/10-3/12 by Smyth) Term exp. 3/15 <i>Resigned</i>	Citizen #2 Representative		By Any Supervisor	At-Large

<b>ENVIRONMENTAL QUALITY ADVISORY COUNCIL (EQAC) (3 years)</b>
--

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Robert D. McLaren (Appointed 12/88-1/95 by Alexander; 1/98-1/07 by Kauffman; 1/10-1/13 by McKay) Term exp. 1/16	At-Large #1 Representative		By Any Supervisor	At-Large
Linda BurchfielMa (Appointed 6/08 by Connolly; 1/10-3/13 by Bulova) Term exp. 1/16	At-Large #2 Representative		By Any Supervisor	At-Large
Stella M. Koch (Appointed 10/96-12/00 by Hanley; 1/04 by Connolly; 1/07-2/13 by Bulova) Term exp. 1/16	At-Large Chairman's Representative		Bulova	At-Large Chairman's
Frank B. Crandall (Appointed 1/99-1/00 by Mendelsohn; 1/04-11/06 by DuBois; 11/09-12/12 by Foust) Term exp. 11/15	Dranesville District Representative		Foust	Dranesville

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**ENVIRONMENTAL QUALITY ADVISORY COUNCIL (EQAC) (3 years)**  
continued

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Larry J. Zaragoza (Appointed 2/08-1/13 by Hyland) Term exp. 1/16	Mount Vernon District Representative		Storck	Mount Vernon
Robert A. Robbins (Appointed 12/13 by Smyth) Term exp. 1/16	Providence District Representative		Smyth	Providence
Clyde Wilbur (Appointed 3/14 by Herrity) Term exp. 11/15	Springfield District Representative	<b>Clyde Wilbur</b>	Herrity	Springfield

**FAIRFAX AREA DISABILITY SERVICES BOARD**

**(3 years- limited to 2 full consecutive terms per MOU, after initial term)**

[NOTE: Persons may be reappointed after being off for 3 years. State Code requires that membership in the local disabilities board include at least 30 percent representation by individuals with physical, visual or hearing disabilities or their family members. For this 15-member board, the minimum number of representation would be 5.

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Petra Osborne; appointed 5/12 by Bulova) Term exp. 11/15 <i>Resigned</i>	At-Large Fairfax County Representative		By Any Supervisor	At-Large
Tapan Banerjee (Appointed 2/07- 11/12 by Foust) Term exp. 11/15	Dranesville District Representative		Foust	Dranesville

**Continued on next page**

**FAIRFAX AREA DISABILITY SERVICES BOARD****(3 years- limited to 2 full consecutive terms per MOU, after initial term)**

Continued

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Michele Hymer Blitz (Appointed 6/06-11/12 by Hudgins) Term exp. 11/15	Hunter Mill District Representative		Hudgins	Hunter Mill
VACANT (Formerly held by Richard Nilsen; appointed 6/13 by McKay) Term exp. 11/15 <i>Resigned</i>	Lee District Representative		McKay	Lee
Jacqueline Browne (Appointed 9/08-12/11 by Gross) Term exp. 11/14	Mason District Representative		Gross	Mason
VACANT (Formerly held by Kelly Greenwood; appointed 4/09-11/13 by Hyland) Term exp. 11/16 <i>Resigned</i>	Mount Vernon District Representative		Storck	Mount Vernon
Donald Kissinger (Appointed 7/10-11/12 by Herrity) Term exp. 11/15	Springfield District Representative	<b>Donald Kissinger</b>	Herrity	Springfield
VACANT (Formerly held by Ann Pimley; appointed 9/03-11/6 by Frey) Term exp. 11/09 <i>Resigned</i>	Sully District Representative		Smith	Sully

**FAIRFAX COMMUNITY LONG TERM CARE COORDINATING COUNCIL  
(2 years)**

**CONFIRMATION NEEDED:**

- Douglas Birnie as a Community Leader Representative
- Ms. Virginia Ruth Reagan as a Long Term Care Provider Representative

**FAIRFAX-FALLS CHURCH COMMUNITY SERVICES BOARD  
(3 years – limited to 3 full terms)**

[NOTE: In accordance with *Virginia Code* Section 37.2-502, "**prior to making any appointment, the appointing authority shall disclose and make available to the public the names of those persons being considered for appointment.**" The appointing authority shall also make information on the candidates available to the public, if such information is available to the appointing authority." **Members can be reappointed after 3 year break from initial 3 full terms. VA Code 37.2-502]**

<b><u>Incumbent History</u></b>	<b><u>Requirement</u></b>	<b><u>Nominee</u></b>	<b><u>Supervisor</u></b>	<b><u>District</u></b>
Pamela Barrett (Appointed 9/09-6/12 by Bulova) Term exp. 6/15	At-Large #1 Chairman's Representative		Bulova	At-Large Chairman's
VACANT (Formerly held by Katherine K. Hanley; appointed 6/13-6/15 by Hudgins) Term exp. 6/18 <i>Resigned</i>	Hunter Mill District Representative	<b>Bettina M. Lawton</b> <i>(Nomination announced on December 8, 2015)</i>	Hudgins	Hunter Mill
VACANT (Formerly held by Susan Beeman; appointed 9/06-9/13 by Gross) Term exp. 6/16 <i>Resigned</i>	Mason District Representative		Gross	Mason

<b>HEALTH CARE ADVISORY BOARD (4 years)</b>
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<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Judith Beattie; appointed 6/96-9/12 by Frey) Term exp. 6/16 <i>Resigned</i>	Sully District Representative		Smith	Sully

<b>HEALTH SYSTEMS AGENCY BOARD (3 years - limited to 2 full terms, may be reappointed after 1 year lapse)</b>
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<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Sally Patterson (Appointed 7/12 by Bulova) Term exp. 6/15 <b><i>Not eligible for reappointment</i></b> (need 1 year lapse)	Consumer #3 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Andrew A. Painter; appointed 2/11 by Smyth) Term exp. 6/13 <i>Resigned</i>	Consumer #4 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Carol Ann Coryell; appointed 6/05-6/08 by Frey) Term exp. 6/11 <i>Resigned</i>	Consumer #6 Representative		By Any Supervisor	At-Large

**HISTORY COMMISSION (3 years)**

[NOTE: The Commission shall include at least one member who is a resident from each supervisor district.] Current Membership:

Braddock - 3	Lee - 2	Providence - 1
Dranesville - 2	Mason - 2	Springfield - 2
Hunter Mill - 3	Mt. Vernon - 3	Sully - 2

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Robert E. Beach (Appointed 11/00 by Hanley; 1/04-12/06 by Connolly; 12/09- 11/12 by Bulova) Term exp. 12/15 <i>Braddock District</i>	Architect Representative		By Any Supervisor	At-Large
Jack L. Hiller (Appointed 3/81- 12/82 by Travesky; 11/85 by Herrity; 12/88-12/06 by McConnell; 12/09- 11/12 by Herrity) Term exp. 12/15 <i>Springfield District</i>	Citizen #1 Representative	<b>Jack L. Hiller</b> (Herrity)	By Any Supervisor	At-Large
Sallie Lyons (Appointed 3/05- 12/12 by Hyland) Term exp. 12/15 <i>Mt. Vernon District</i>	Citizen #2 Representative		By Any Supervisor	At-Large
Lynne Garvey-Hodge (Appointed 11/00- 12/06 by McConnell; 12/09-11/12 by Herrity) Term exp. 12/15 <i>Springfield District</i>	Citizen #4 Representative	<b>Lynne Garvey- Hodge</b> (Herrity)	By Any Supervisor	At-Large
Deborah Robison (Appointed 5/07- 11/12 by Frey) Term exp. 12/15 <i>Sully District</i>	Citizen #5 Representative		By Any Supervisor	At-Large

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**HISTORY COMMISSION (3 years)**  
 continued

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Mary Lipsey (Appointed 5/06-11/12 by Bulova) Term exp. 12/15 <i>Braddock District</i>	Citizen #6 Representative	<b>Mary Lipsey</b> (Cook)	By Any Supervisor	At-Large
Michael Irwin (Appointed 12/05-12/06 by Connolly; 1/10-11/12 by Smyth) Term exp. 12/15 <i>Providence District</i>	Citizen #8 Representative		By Any Supervisor	At-Large
Anne M. Barnes (Appointed 9/03-12/12 by Hyland) Term exp. 12/15 <i>Mt. Vernon District</i>	Citizen/Minority Representative		By Any Supervisor	At-Large

**HUMAN RIGHTS COMMISSION (3 years)**

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Michael Kwon (Appointed 12/09-11/12 by Bulova) Term exp. 9/15	At-Large #1 Representative	<b>George Alber</b> (Bulova)	By Any Supervisor	At-Large
Janice Brangman (Appointed 2/13 by Herrity) Term exp. 9/15	At-Large #3 Representative	<b>Janice Brangman</b> (Herrity)	By Any Supervisor	At-Large
Amy Sanborn Owen (Appointed 5/09-9/12 by Cook) Term exp. 9/15	At-Large #10 Representative		By Any Supervisor	At-Large



<b>HUMAN SERVICES COUNCIL (4 years)</b>
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<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Myra Herbert; appointed 7/10-7/12 by Bulova) Term exp. 7/16 <i>Resigned</i>	At-Large #2 Chairman's Representative		Bulova	At-Large Chairman's
VACANT (Formerly held by Carol Hawn; appointed 9/07-6/15 by Frey) Term exp. 7/19	Sully District #2 Representative		Smith	Sully

<b>INFORMATION TECHNOLOGY POLICY ADVISORY COMMITTEE (ITPAC) (3 years)</b>
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<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Kathryn Walsh (Appointed 6/01 by Hanley; 1/04-1/07 by Connolly; 12/09-12/12 by Bulova) Term exp. 12/15	At-Large Chairman's Representative		Bulova	At-Large Chairman's
Bhaskar Kuppusamy (Appointed 9/11- 11/12 by Hudgins) Term exp. 12/15	Hunter Mill District Representative		Hudgins	Hunter Mill
VACANT (Formerly held by Emily B. McCoy; appointed 1/01- 12/06 by Kauffman; 12/09- 12/12 by McKay) Term exp. 12/15 <i>Resigned</i>	Lee District Representative		McKay	Lee

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**INFORMATION TECHNOLOGY POLICY ADVISORY COMMITTEE (ITPAC)****(3 years)**

continued

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by John K. Kidwell; appointed 7/12- 11/16 by Frey) Term exp. 12/16 <i>Resigned</i>	Sully District Representative		Smith	Sully

**JUVENILE AND DOMESTIC RELATIONS COURT CITIZENS ADVISORY  
COUNCIL  
(2 years)**

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Debra Kathman (Appointed 3/15 by Cook) Term exp. 1/16	Braddock District Representative		Cook	Braddock
Robert J. Marro (Appointed 4/08- 1/14 by Foust) Term exp. 1/16	Dranesville District Representative		Foust	Dranesville
Brian Murray (Appointed 3/08- 1/14 by McKay) Term exp. 1/16	Lee District Representative		McKay	Lee
Jan B. Reitman (Appointed 7/14 by Gross) Term exp. 1/16	Mason District Representative	<b>Jan B. Reitman</b>	Gross	Mason
Michael J. Beattie (Appointed 7/11- 1/14 by Smyth) Term exp. 1/16	Providence District Representative		Smyth	Providence
Melissa Smarr (Appointed 7/09- 1/14 by Herrity) Term exp. 1/16	Springfield District Representative	<b>Melissa Smarr</b>	Herrity	Springfield

**MOSAIC DISTRICT COMMUNITY DEVELOPMENT AUTHORITY  
(4 years)**

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
John W. Foust (Appointed 1/12 by Supervisor Smyth) Term exp. 1/16	A District Supervisor Representative		By Any Supervisor	At-Large
Gary Hurst (appointed 1//10-1/12 by Smyth) Term exp. 1/16	Developer Representative		By Any Supervisor	At-Large

**OVERSIGHT COMMITTEE ON DRINKING AND DRIVING (3 years)**

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Eileen Nelson; appointed 3/04-6/07 by Connolly; 6/10 by Bulova) Term exp. 6/13 <i>Resigned</i>	At-Large Chairman's Representative		Bulova	At-Large Chairman's
William Uehling (Appointed 3/10-7/12 by Bulova) Term exp. 6/15	Braddock District Representative		Cook	Braddock
VACANT (Formerly held by Amy K. Reif; appointed 8/09-6/12 by Foust) Term exp. 6/15 <i>Resigned</i>	Dranesville District Representative		Foust	Dranesville

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**OVERSIGHT COMMITTEE ON DRINKING AND DRIVING (3 years)**  
**continued**

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Adam Parnes; appointed 9/03-6/12 by Hudgins) Term exp. 6/15 <i>Resigned</i>	Hunter Mill District Representative		Hudgins	Hunter Mill
VACANT (Formerly held by Richard Nilsen; appointed 3/10-6/10 by McKay) Term exp. 6/13 <i>Resigned</i>	Lee District Representative		McKay	Lee
Tina Montgomery (Appointed 9/10-6/11 by Smyth) Term exp. 6/14	Providence District Representative		Smyth	Providence

**PARK AUTHORITY (4 years)**

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Mary Cortina (Appointed 2/13 by Bulova) Term exp. 12/15	At-Large #1 Representative	<b>Mary Cortina</b> (Bulova)	By Any Supervisor	At-Large
Edward Batten (Appointed 1/03-1/08 by Kauffman; 12/11 by McKay) Term exp. 12/15	Lee District Representative		McKay	Lee
Harold Strickland (Appointed 12/92- 12/11 by Frey) Term exp. 12/15	Sully District Representation		Smith	Sully

<b>PLANNING COMMISSION (4 years)</b>
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<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
James Hart (Appointed 1/04-1/08 by Connolly; 12/11 by Bulova) Term exp. 12/15	At-Large #3 Representative		By Any Supervisor	At-Large
Ellen J. Hurley (Appointed 12/11 by Cook) Term exp. 12/15	Braddock District Representative	<b>Ellen J. Hurley</b>	Cook	Braddock
James T. Migliaccio (Appointed 6/10-12/11 by McKay) Term exp. 12/15	Lee District Representative		McKay	Lee
John Litzenberger (Appointed 12/07- 12/11 by Frey) Term exp. 12/15	Sully District Representative		Smith	Sully

<b>ROAD VIEWERS BOARD (1 year)</b>
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<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Joseph Bunnell; appointed 9/05-12/06 by McConnell; 2/08- 11/13 by Herrity) Term exp. 12/14 <i>Resigned</i>	At-Large #1 Representative		By Any Supervisor	At-Large
John W. Ewing (Appointed 2/01-11/02 by Hanley; 1/04-12/08 by Connolly; 12/09- 12/14 by Bulova) Term exp. 12/15	At-Large #2 Representative		By Any Supervisor	At-Large

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**ROAD VIEWERS BOARD (1 year)**  
**continued**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Marcus Wadsworth (Appointed 6/09-11/14 by McKay) Term exp. 12/15	At-Large #3 Representative		By Any Supervisor	
VACANT (Formerly held by Stephen E. Still; appointed 6/06-12/11 by Smyth) Term exp. 12/12 <i>Resigned</i>	At-Large #4 Representative		By Any Supervisor	At-Large
Micah D. Himmel (Appointed 12/11-1/15 by Smyth) Term exp. 12/15	At-Large #5 Representative		By Any Supervisor	

**SMALL BUSINESS COMMISSION, FAIRFAX COUNTY (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
John D. Pellegrin (Appointed 9/09- 12/12 by Bulova) Term exp. 12/15	At-Large #1 Representative		By Any Supervisor	At-Large
Tracey Wood (Appointed 6/13 by Bulova) Term exp. 12/15	At-Large #3 Representative		By Any Supervisor	At-Large
Elizabeth Novak (Appointed 10/05- 11/12 by Gross) Term exp. 12/15	Mason District Representative	<b>Elizabeth Novak</b>	Gross	Mason
Marvin Powell (Appointed 10/04- 11/12 by Frey) Term exp. 12/15	Sully District Representative		Smith	Sully

<b>SOUTHGATE COMMUNITY CENTER ADVISORY COUNCIL (2 years)</b>
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<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Robert Dim; appointed 3/05-3/12 by Hudgins) Term exp. 3/14 <i>Resigned</i>	Fairfax County #5 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Cleveland Williams; appointed 12/11-3/13 by Hudgins) Term exp. 3/15 <i>Resigned</i>	Fairfax County #7 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Linda Diamond; appointed 3/07-4/13 by Hudgins) Term exp. 3/15 <i>Resigned</i>	Fairfax County #8 Representative		By Any Supervisor	At-Large

<b>TENANT LANDLORD COMMISSION (3 years)</b>
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<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Eric Fielding (Appointed 6/15 by Bulova) Term exp. 12/15	Citizen Member #3 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Sally D. Liff; appointed 8/04-1/11 by Smyth) Term exp. 1/14 <i>Deceased</i>	Condo Owner Representative		By Any Supervisor	At-Large
Karen Geier-Smith (Appointed 6/06-12/12 by Bulova) Term exp. 12/15	Landlord Member #1 Representative		By Any Supervisor	At-Large
Christopher L. Kocsis (Appointed 3/99-11/00 by Hanley; 1/04- 12/006 by Connolly; 12/09-12/12 by Bulova) Term exp. 12/15	Landlord Member #2 Representative	<b>Christopher L. Kocsis</b> (Bulova)	By Any Supervisor	At-Large
VACANT (Formerly held by Evelyn McRae; appointed 6/98-8/01 by Hanley; 12/04-1/08 by Connolly; 4/11 by Bulova) Term exp. 1/14 <i>Resigned</i>	Tenant Member #2 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Kevin Denton; appointed 4/10&1/11 by Smyth) Term exp. 1/14 <i>Resigned</i>	Tenant Member #3 Representative		By Any Supervisor	At-Large



<b>TRAILS AND SIDEWALKS COMMITTEE (2 years)</b>
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<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Kenneth Comer (Appointed 2/12-2/14 by Bulova) Term exp. 1/16	At-Large Chairman's Representative		Bulova	At-Large Chairman's
Thomas F. Kennedy (Appointed 6/09-1/14 by Cook) Term exp. 1/16	Braddock District Representative		Cook	Braddock
Wade H.B. Smith (Appointed 4/02 by Mendelsohn; 1/04- 1/08 by DuBois; 1/10-1/14 by Foust) Term exp. 1/16	Dranesville District Representative		Foust	Dranesville
Jeffrey A. Anderson (Appointed 5/11-1/14 by Hudgins) Term exp. 1/16	Hunter Mill District Representative		Hudgins	Hunter Mill
Robert Michie (Appointed 1/02-1/08 by Kauffman; 1/10- 1/14 by McKay) Term exp. 1/16	Lee District Representative		McKay	Lee
Peter Christensen (Appointed 2/06-3/14 by Hyland) Term exp. 1/16	Mount Vernon District Representative		Storck	Mount Vernon
Roger A. Wilson (Appointed 3/14 by Smyth) Term exp. 1/16	Providence District Representative		Smyth	Providence
Alan G. Young (Appointed 3/12-1/14 by Herrity) Term exp. 1/16	Springfield District Representative		Herrity	Springfield
Paul Kent (Appointed 1/10-1/14 by Frey) Term exp. 1/16	Sully District Representative		Smith	Frey

<b>TREE COMMISSION (3 years)</b>
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<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Mackell Mikell (Appointed 1/13 by McKay) Term exp. 10/15	Lee District Representative		McKay	Lee
VACANT (Formerly held by Scott J. Pearson; appointed 3/11-10/13 by Gross) Term exp. 10/16 <i>Resigned</i>	Mason District Representative		Gross	Mason
VACANT (Formerly held by Dean Dastvar; appointed 11/13 by Herrity) Term exp. 10/16 <i>Resigned</i>	Springfield District Representative		Herrity	Springfield
VACANT (Formerly held by James Schoonmaker; appointed 9/12-6/13 by Frey) Term exp. 6/16 <i>Resigned</i>	Sully District Representative		Smith	Sully

**TYSONS TRANSPORTATION SERVICE DISTRICT ADVISORY BOARD  
(2 years)**

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Michael Bogasky; appointed 2/13 by Smyth) Term exp. 2/15 <i>Resigned</i>	Residential Owners and HOA/Civic Association Representative #1		Smyth	Providence
VACANT (Formerly held by Tim Steffan; appointed 2/13-3/15 by Bulova) Term exp. 2/17	Commercial or Retail Ownership #2 Representative	<b>Cory Scott</b> (Smyth)	By Any Supervisor	At-Large

**CONFIRMATION NEEDED:**

- Ms. Cindy Clare as the Apartment Owner Association Representative

**UNIFORMED RETIREMENT SYSTEM BOARD OF TRUSTEES (4 years)**

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Daniel Duncan; appointed 10/13 by Bulova) Term exp. 10/17 <i>Resigned</i>	Citizen appointed by BOS #2 Representative		By Any Supervisor	At-Large

<b>WETLANDS BOARD (5 years)</b>
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<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Elizabeth Martin (Appointed 11/09 by Gross) Term exp. 12/13	At-Large #1 Representative		By Any Supervisor	At-Large
Anita Van Breda (Appointed 12/13 by Bulova) Term exp. 12/15	At-Large #2 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Gavin Carter; appointed 1/13-11/14 by Hyland) Term exp. 12/19 <i>Resigned</i>	Mount Vernon District #3 Representative		Storck	Mount Vernon

<b>YOUTH BASKETBALL COUNCIL ADVISORY BOARD (1 year)</b>
---

**CONFIRMATIONS NEEDED:**

- Mr. E. J. Thomas as the Treasurer and Vienna Youth Incorporated Representative
- Mr. Dave Vennergrund as the Commissioner
- Mr. Gordon Austin as the Chairman
- Mr. Eric Cooksey as the Secretary and the Herndon Optimist Club Representative
- Mr. David Maher as the Arlington County Recreation Representative commissioner
- Mr. James Bosley as the Member At-Large Representative and Lee Mount Vernon Sports Club Representative
- Mr. Grady Bryant as the Member At-Large Alternate Representative

Continued on next page

**YOUTH BASKETBALL COUNCIL ADVISORY BOARD (1 year)****CONFIRMATIONS NEEDED:**

- Mr. Frank DeLatour as the Parliamentary and the Annandale Boys and Girls Club Alternate Representative
- Mr. Charles Chandler as the Scheduler
- Mr. Christopher Pulley as the Fairfax County Recreation Representative
- Mr. Curtis Boxley as the Alexandria City Recreation Representative
- Mr. Marvin Elliott as the Alexandria City Recreation Alternate Representative
- Mr. Lezone Kenney as the Annandale Boys and Girls Club Representative
- Mr. Larry Barr as the Arlington County Alternate Representative
- Mr. Daryl Lucas as the Baileys Community Center Representative
- Mr. Jim Watson as the Braddock Road Youth Club Representative
- Mr. Stew Clark as the Braddock Road Youth Club Alternate Representative
- Mr. Cliff Krug as the Burke Basketball Alternate Representative
- Ms. Kathy Krug as the Burke Basketball Representative
- Mr. John Enders as the Chantilly Youth Association Representative
- Mr. Rick Shryock as the Chantilly Youth Association Alternate Representative
- Mr. George Ragan as the Fairfax Police Youth Club Representative
- Mr. Chris Madison as the Falls Church Parks and Recreation Representative
- Mr. Alton Greene as the Fort Belvoir Youth Services Representative
- Mr. Herb Marshall as the Fort Belvoir Youth Services Alternate Representative

**Continued on next page**

**YOUTH BASKETBALL COUNCIL ADVISORY BOARD (1 year)**

continued

**CONFIRMATIONS NEEDED:**

- Mr. Jack Lohrer as the Fort Hunt Youth Athletic Association Representative
- Mr. David Bruce Bauer, Jr. as the Gainesville Basketball Association Representative
- Mr. Richard Warrick as the Great Falls Basketball Representative
- Ms. Laura Bean as the Great Falls Basketball Alternate Representative
- Ms. Martha Coleman as the Gum Springs Community Center Representative
- Mr. Chris Watari as the Herndon Optimist Club Alternate Representative
- Mr. Mike Trivisonno as the James Lee Community Center Representative
- Mr. Tim Strike as the James Lee Community Center Alternate Representative
- Ms. Kim Thompson as the Lee District Basketball Representative
- Mr. Dennis McMinn as the Lee District Basketball Alternate Representative
- Mr. Lee Hingle as the Lee Mount Vernon Sports Club Alternate Representative
- Mr. Jeff Goettman as the McLean Youth Incorporated Representative
- Mr. Gerry Megas as the McLean Youth Incorporated Alternate Representative
- Mr. Andy Kim as the Mercer Representative
- Mr. Jason Murphy as the Mercer Alternate Representative
- Mr. Dillon Lee as the Mount Vernon Youth Association Representative
- Mr. Stacey Johnson as the Mount Vernon Youth Association Alternate Representative

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**YOUTH BASKETBALL COUNCIL ADVISORY BOARD (1 year)**  
**Continued**

**CONFIRMATIONS NEEDED:**

- Mr. John Schmid as the Reston Youth Basketball League Representative
- Mr. James Byrne as the Reston Youth Basketball League Alternate Representative
- Mr. Ed Knox as the Southwestern Youth Association Representative
- Mr. Chris Spera as the Springfield Youth Club Representative
- Mr. Spencer Kimball as the Springfield Youth Club Alternate Representative
- Mr. Scott Choate as the Turnpike Basketball Club Representative
- Mr. Mike Mastrota as the Turnpike Basketball Club Alternate Representative

Board Agenda Item  
January 12, 2016

10:50 a.m.

Items Presented by the County Executive



Board Agenda Item  
January 12, 2016

ADMINISTRATIVE - 1

Authorization to Advertise a Public Hearing to Consider Adopting an Ordinance  
Expanding the Greenway Downs Residential Permit Parking District, District 13  
(Providence District)

ISSUE:

Board authorization to advertise a public hearing to consider a proposed amendment to Appendix G, of *The Code of the County of Fairfax, Virginia* (Fairfax County Code), to expand the Greenway Downs Residential Permit Parking District (RPPD), District 13.

RECOMMENDATION:

The County Executive recommends that the Board authorize advertisement of a public hearing.

TIMING:

The Board should take action on January 12, 2016, to advertise a public hearing for February 2, 2016, at 4:00 p.m.

BACKGROUND:

Section 82-5A-4(b) of the Fairfax County Code, authorizes the Board to establish or expand an RPPD in any residential area of the County if: (1) the Board receives a petition requesting establishment or expansion of an RPPD that contains signatures representing at least 60 percent of the eligible addresses of the proposed District and representing more than 50 percent of the eligible addresses on each block of the proposed District, (2) the proposed District contains a minimum of 100 contiguous or nearly contiguous on-street parking spaces 20 linear feet in length per space, unless the subject area is to be added to an existing district, (3) 75 percent of the land abutting each block within the proposed District is developed residential, and (4) 75 percent of the total number of on-street parking spaces of the petitioning blocks are occupied, and at least 50 percent of those occupied spaces are occupied by nonresidents of the petitioning blocks, as authenticated by a peak-demand survey. In addition, an application fee of \$10 per petitioning address is required for the establishment or expansion of an RPPD. In the case of an amendment expanding an existing District, the foregoing provisions apply only to the area to be added to the existing District.

Board Agenda Item  
January 12, 2016

On June 30, 2015, a peak parking demand survey was conducted for the requested area. The results of this survey verified that more than 75 percent of the total number of on-street parking spaces of the petitioning blocks were occupied by parked vehicles, and more than 50 percent of those occupied spaces were occupied by nonresidents of the petitioning blocks. All other requirements to expand the RPPD have been met.

FISCAL IMPACT:

The cost of sign installation is estimated at \$2,000 to be paid from Fairfax County Department of Transportation funds.

ENCLOSED DOCUMENTS:

Attachment I: Proposed Amendment to the Fairfax County Code  
Attachment II: Map Depicting Proposed Limits of RPPD Expansion

STAFF:

Robert A. Stalzer, Deputy County Executive  
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)  
Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT  
Neil Freschman, Chief, Traffic Engineering Section, FCDOT  
Maria Turner, Sr. Transportation Planner, FCDOT  
Charisse Padilla, Transportation Planner, FCDOT

Proposed Amendment

Amend *The Code of the County of Fairfax, Virginia*, by adding the following streets in Appendix G-13, Section (b), (2), Greenway Downs Residential Permit Parking District, in accordance with Article 5A of Chapter 82:

*Cavalier Trail (Route 1712):*

From Winchester Way to the northern property boundary of 6801 Cavalier Trail; east side only

*Greenway Boulevard (Route 1715):*

From the northern property boundary of 2754 Greenway Boulevard to the southern property boundary of 2804 Greenway Boulevard; west side only

From the northern property boundary of 2757 Greenway Boulevard to the southern property boundary of 2805 Greenway Boulevard; east side only

*Summerfield Road (Route 1713):*

From the northern property boundary of 2756 Summerfield Road to Cavalier Trail; west side only

From the northern property boundary of 2759 Summerfield Road to Custis Parkway; east side only

*Winchester Way (Route 1726):*

From Cavalier Trail to Bolling Road



FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION  
PROPOSED EXPANSION  
GREENWAY DOWNS RPPD  
PROVIDENCE DISTRICT



Board Agenda Item  
January 12, 2016

ADMINISTRATIVE - 2

Authorization to Advertise a Public Hearing to Consider Adopting an Ordinance  
Expanding the West Springfield Residential Permit Parking District, District 7  
(Springfield District)

ISSUE:

Board authorization to advertise a public hearing to consider a proposed amendment to Appendix G, of *The Code of the County of Fairfax, Virginia* (Fairfax County Code), to expand the West Springfield Residential Permit Parking District (RPPD), District 7.

RECOMMENDATION:

The County Executive recommends that the Board authorize advertisement of a public hearing.

TIMING:

The Board should take action on January 12, 2016, to advertise a public hearing for February 2, 2016, at 4:00 p.m.

BACKGROUND:

Section 82-5A-4(a) of *The Code of the County of Fairfax, Virginia*, authorizes the Board to establish RPPD restrictions encompassing an area within 2,000 feet walking distance from the pedestrian entrances and/or 1,000 feet from the property boundaries of an existing or proposed high school, existing or proposed rail station, or existing Virginia college or university campus if: (1) the Board receives a petition requesting the establishment or expansion of such a District, (2) such petition contains signatures representing at least 60 percent of the eligible addresses of the proposed District and representing more than 50 percent of the eligible addresses on each block face of the proposed District, and (3) the Board determines that 75 percent of the land abutting each block within the proposed District is developed residential. In addition, an application fee of \$10 per address is required for the establishment or expansion of an RPPD. In the case of an amendment expanding an existing District, the foregoing provisions apply only to the area to be added to the existing District.

Board Agenda Item  
January 12, 2016

Staff has verified that Cardinal Hill Place from the northern property boundary of 6301 Cardinal Hill Place south to the cul-de-sac; and on the west side from Tuttle Road to the cul-de-sac inclusive, is within 1,000 feet of the property boundary of West Springfield High School, and all other requirements to expand the RPPD have been met.

FISCAL IMPACT:

The cost of sign installation is estimated at \$250 to be paid from Fairfax County Department of Transportation funds.

ENCLOSED DOCUMENTS:

Attachment I: Proposed Amendment to the Fairfax County Code

Attachment II: Map Depicting Proposed Limits of RPPD Expansion

STAFF:

Robert A. Stalzer, Deputy County Executive

Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)

Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT

Neil Freschman, Chief, Traffic Engineering Section, FCDOT

Maria Turner, Sr. Transportation Planner, FCDOT

Charisse Padilla, Transportation Planner, FCDOT

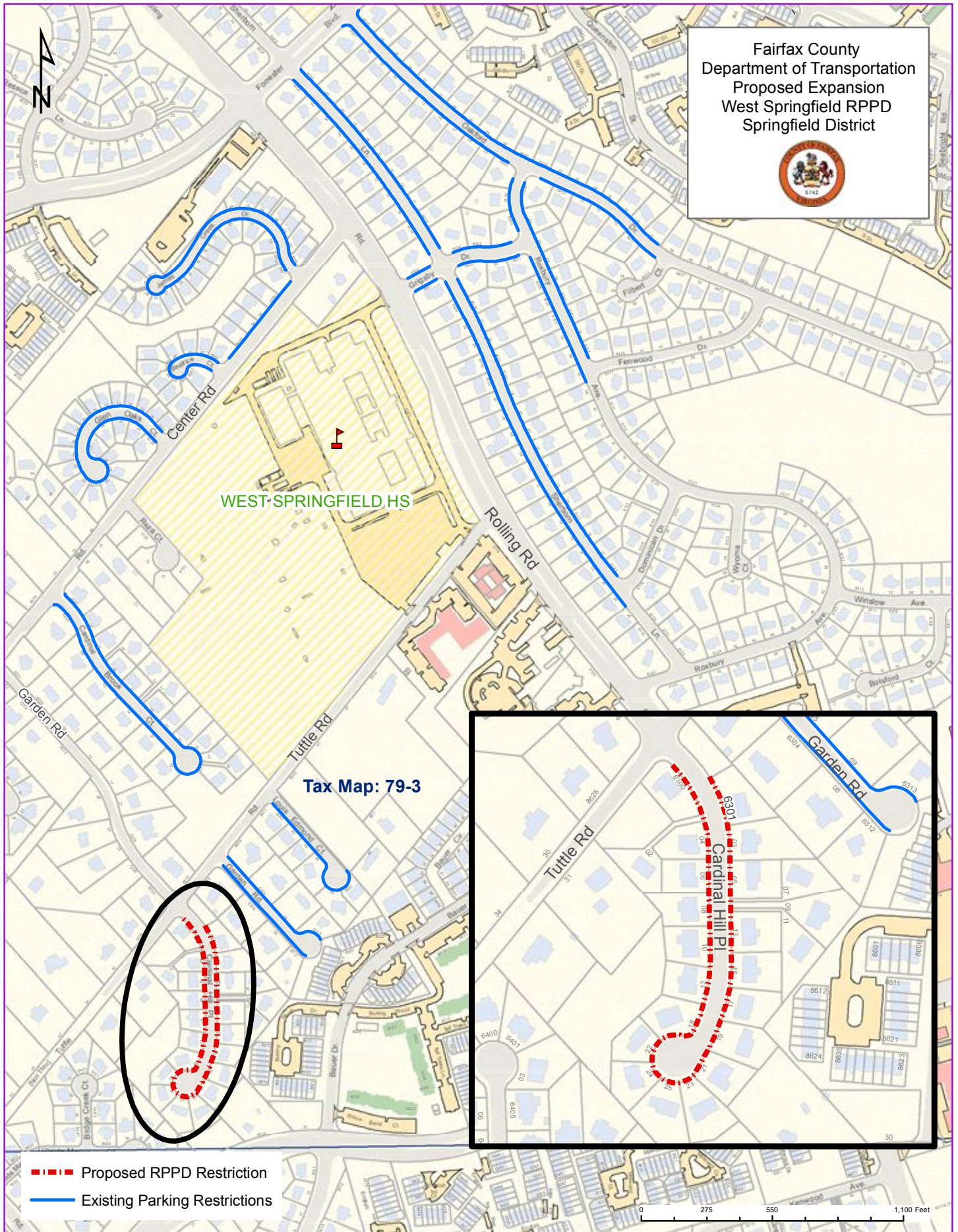
Proposed Amendment

Amend *The Code of the County of Fairfax, Virginia*, by amending the following streets in Appendix G-7, Section (b), (2), West Springfield Residential Permit Parking District, in accordance with Article 5A of Chapter 82:

*Cardinal Hill Place (Route 8602):*

From the northern property boundary of 6301 Cardinal Hill Place south to the cul-de-sac, and on the west side from Tuttle Road to the cul-de-sac inclusive







Board Agenda Item  
January 12, 2016

ADMINISTRATIVE - 3

Authorization to Advertise a Public Hearing to Establish Parking Restrictions on Hamaker Court (Providence District)

ISSUE:

Board authorization to advertise a public hearing to consider a proposed amendment to Appendix R of *The Code of the County of Fairfax, Virginia* (Fairfax County Code), to establish parking restrictions on Hamaker Court in the Providence District.

RECOMMENDATION:

The County Executive recommends that the Board authorize advertisement of a public hearing for February 2, 2016, at 4:00 p.m. to consider adoption of a Fairfax County Code amendment (Attachment I) to Appendix R, to prohibit commercial vehicles, recreational vehicles and all trailers as defined in Chapter 82 of the Fairfax County Code from parking on Hamaker Court from 6:00 p.m. to 9:00 a.m., seven days per week.

TIMING:

The Board of Supervisors should take action on January 12, 2016, to provide sufficient time for advertisement of the public hearing on February 2, 2016, at 4:00 p.m.

BACKGROUND:

Fairfax County Code Section 82-5-37(5) authorizes the Board of Supervisors to designate restricted parking in non-residential areas where long term parking of vehicles diminishes the capacity of on-street parking for other uses.

Property managers representing all of the landowners along Hamaker Court sent a letter to the Providence District office requesting assistance to restrict long term parking of large out of the area vehicles on Hamaker Court to allow parking for their tenants and tenant's customers. They are specifically requesting a parking restriction for all commercial vehicles, recreational vehicles, and all trailers along the entire length of Hamaker Court from 6:00 p.m. to 9:00 a.m., seven days per week.

Staff has reviewed this area on several occasions over a period of time in excess of 30 days and verified that long term parking of large commercial vehicles, recreational vehicles, and trailers is occurring. Such long term parking results in a lack of parking for the customers and employees of the businesses located on this street.

Board Agenda Item  
January 12, 2016

FISCAL IMPACT:

The cost of sign installation is estimated at \$800 to be paid from Fairfax County Department of Transportation funds.

ENCLOSED DOCUMENTS:

Attachment I: Amendment to the Fairfax County Code, Appendix R (General Parking Restrictions)

Attachment II: Area Map of Proposed Parking Restriction

STAFF:

Robert A. Stalzer, Deputy County Executive

Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)

Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT

Neil Freschman, Chief, Traffic Engineering Section, FCDOT

Maria Turner, Sr. Transportation Planner, FCDOT

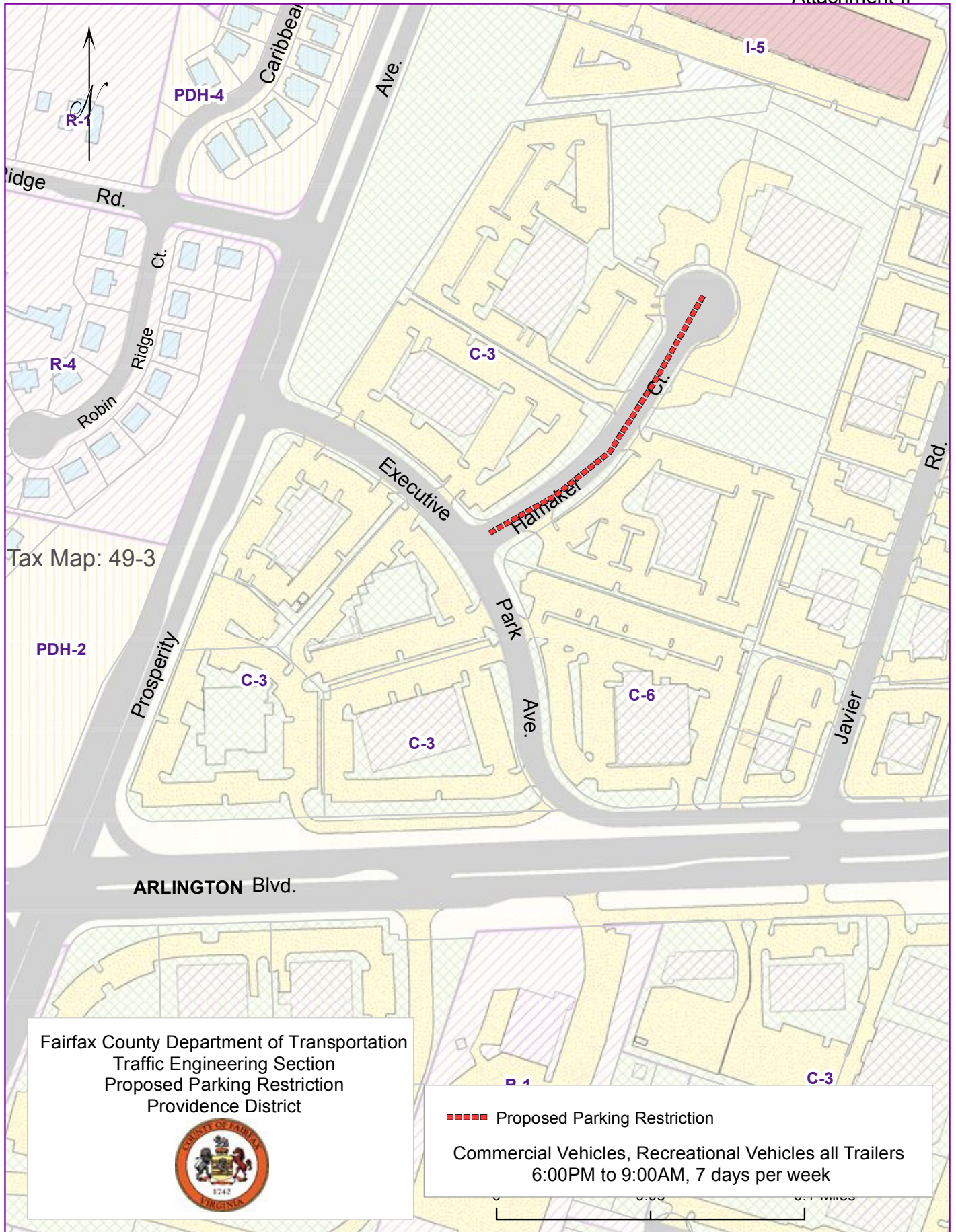
PROPOSED CODE AMENDMENT

THE CODE OF THE COUNTY OF FAIRFAX, VIRGINIA  
APPENDIX R

Amend *The Code of the County of Fairfax, Virginia*, by adding the following to Appendix R, in accordance with Section 82-5-37:

Hamaker Court (Route 6993).

Commercial vehicles, recreational vehicles, and trailers as defined in Chapter 82 of the Fairfax County Code shall be restricted from parking on Hamaker Court from Executive Park Avenue to the cul-de-sac inclusive from 6:00 p.m. to 9:00 a.m., seven days per week.



ADMINISTRATIVE - 4

Authorization to Advertise a Public Hearing to Establish Parking Restrictions on Mariah Court (Sully District)

ISSUE:

Board authorization to advertise a public hearing to consider a proposed amendment to Appendix R of *The Code of the County of Fairfax, Virginia* (Fairfax County Code), to establish parking restrictions on Mariah Court in the Sully District.

RECOMMENDATION:

The County Executive recommends that the Board authorize advertisement of a public hearing for February 2, 2016, at 4:00 p.m. to consider adoption of a Fairfax County Code amendment (Attachment I) to Appendix R, to prohibit commercial vehicles, recreational vehicles and all trailers as defined in Chapter 82 of the Fairfax County Code from parking on Mariah Court from 9:00 p.m. to 6:00 a.m., seven days per week.

TIMING:

The Board of Supervisors should take action on January 12, 2016, to provide sufficient time for advertisement of the public hearing on February 2, 2016, at 4:00 p.m.

BACKGROUND:

Fairfax County Code Section 82-5-37(5) authorizes the Board of Supervisors to designate restricted parking in non-residential areas where long term parking of vehicles diminishes the capacity of on-street parking for other uses.

The Chantilly Corporate Center Condominium Owners Association and property owners of various parcels along Mariah Court contacted the Sully District office seeking assistance to restrict long term parking of large out of the area vehicles on Mariah Court. They are specifically requesting a parking restriction for all commercial vehicles, recreational vehicles, and all trailers along the entire length of Mariah Court from 9:00 p.m. to 6:00 a.m., seven days per week.

Staff has reviewed this area on several occasions over a period of time in excess of 30 days and verified that long term parking of large commercial vehicles, recreational vehicles, and trailers is occurring.

Board Agenda Item  
January 12, 2016

FISCAL IMPACT:

The cost of sign installation is estimated at \$800 to be paid from Fairfax County Department of Transportation funds.

ENCLOSED DOCUMENTS:

Attachment I: Amendment to the Fairfax County Code, Appendix R (General Parking Restrictions)

Attachment II: Area Map of Proposed Parking Restriction

STAFF:

Robert A. Stalzer, Deputy County Executive

Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)

Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT

Neil Freschman, Chief, Traffic Engineering Section, FCDOT

Maria Turner, Sr. Transportation Planner, FCDOT

PROPOSED CODE AMENDMENT

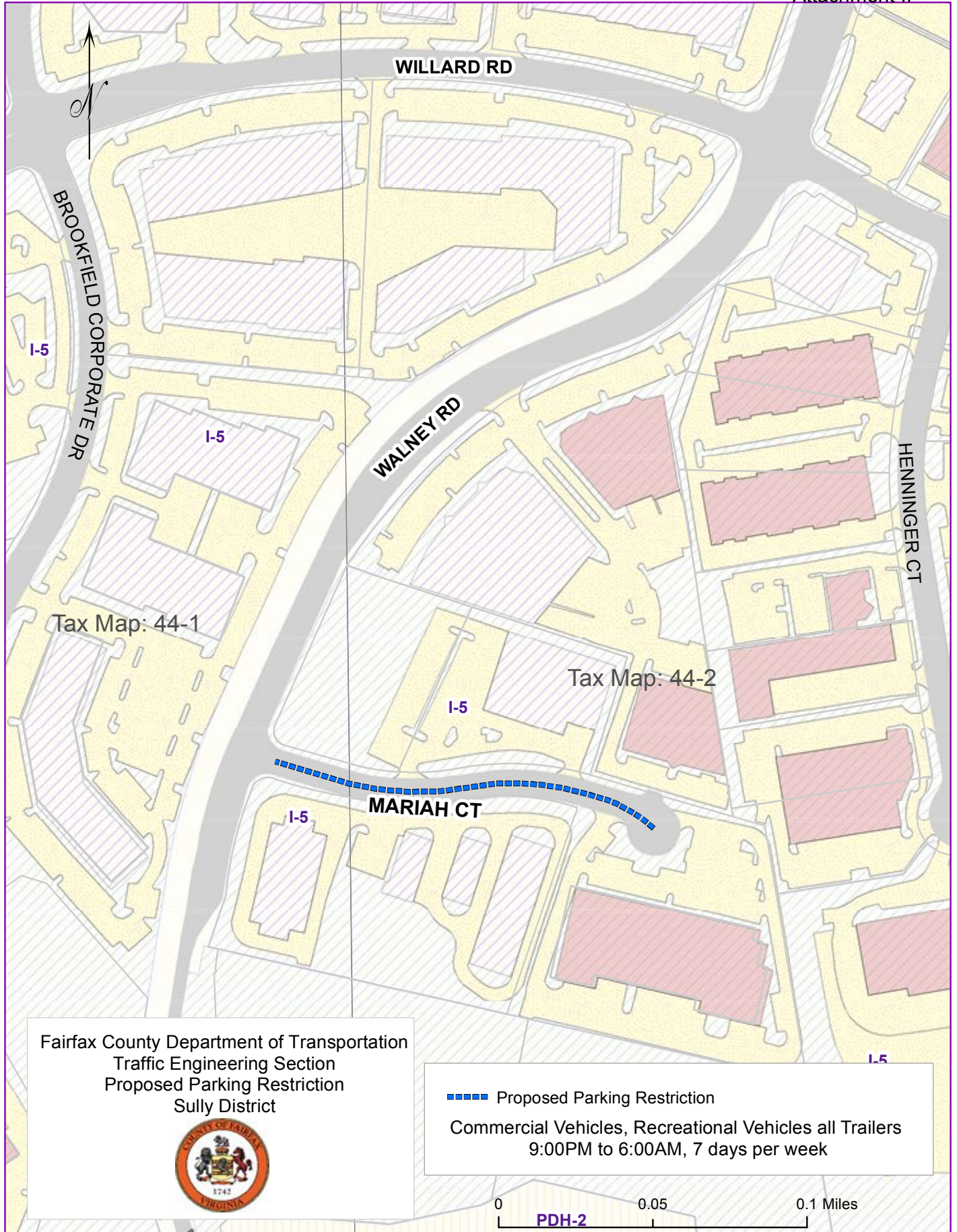
THE CODE OF THE COUNTY OF FAIRFAX, VIRGINIA  
APPENDIX R

Amend *The Code of the County of Fairfax, Virginia*, by adding the following to Appendix R, in accordance with Section 82-5-37:

Mariah Court (Route 8313).

Commercial vehicles, recreational vehicles, and trailers as defined in Chapter 82 of the Fairfax County Code shall be restricted from parking on Mariah Court from Walney Road to the cul-de-sac inclusive from 9:00 p.m. to 6:00 a.m., seven days per week.







ADMINISTRATIVE - 5

Authorization for the Fairfax County Fire and Rescue Department to Apply for and Accept Grant Funding from the U.S. Department of Homeland Security Grant for the Assistance to Firefighters (AFG) Grant

ISSUE:

Board of Supervisors authorization is requested for the Fairfax County Fire and Rescue Department (FRD) to apply for and accept funding, if received, from the U.S. Department of Homeland Security for the Assistance to Firefighters Grant (AFG) in the amount of \$393,615, including \$51,341 in Local Cash Match. The grant funding will support Emergency Medical Services (EMS) training to upgrade approximately 30 Advanced Life Support (ALS) providers who currently hold an EMT-Intermediate level certification to the Paramedic level certification (EMT I-P). This transition is necessary to meet the national model for EMS training, upcoming state requirements and health insurance provider credentialing, which will no longer recognize the EMT-Intermediate level certification for ALS providers after March 31, 2019. The program period is typically one year from the date of the award. There are no positions associated with this grant. The required Local Cash Match is available in the Federal-State Grant Fund. If the actual award received is significantly different from the application amount, another item will be submitted to the Board requesting appropriation of grant funds. Otherwise, staff will process the award administratively as per Board policy.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors authorize the Fire and Rescue Department to apply for and accept funding, if received, from the U.S. Department of Homeland Security for the 2015 Assistance to Firefighters Grant in the amount of \$393,615 including \$51,341 in Local Cash Match. Funding will support EMS training to upgrade approximately 30 ALS providers who currently hold an EMT-Intermediate level certification to the Paramedic level certification in order to meet state requirements. There are no positions associated with this award.

TIMING:

Board approval is requested on January 12, 2016. FRD has received notification that applications are due January 15, 2016.

BACKGROUND:

The Assistance to Firefighters Grant (AFG) program was originally authorized under the Defense Authorization Bill of 2001, Public Law 106-398, which amended Section 33 of the Federal Fire Prevention and Control Act of 1974, 15 U.S.C. 2201 et seq. This program supports the Country's national preparedness goal to prevent, protect, respond to, and recover from both terrorist attacks and catastrophic natural disasters. The purpose of the Assistance to Firefighters Grant program is to enhance, through financial assistance, the safety of the public and firefighters regarding fire and fire-related hazards. For program year 2015, approximately \$306 million will be available to assist fire departments and non-affiliated EMS organizations across the United States.

FRD proposes to apply for funds to support upgrading ALS providers who currently hold EMT-Intermediate level certifications to Paramedic level certifications (EMT I-P). This transition is necessary to meet the national model for EMS training and health insurance provider credentialing, which will no longer recognize the EMT-Intermediate level for ALS providers after March 31, 2019.

The Commonwealth of Virginia is one of only two states that still recognize the EMT-Intermediate level certification for ALS providers. FRD has begun to transition all authorized ALS providers at the EMT-Intermediate level to Paramedic prior to the March 2019 deadline. After the deadline, providers with the EMT-Intermediate level certification will no longer be considered a provider of ALS services by the state and many health insurance providers, restricting any cost recovery efforts to the Basic Life Support (BLS) level. FRD has 103 ALS authorized providers who currently hold the EMT-Intermediate certification that must complete a "bridge" course to obtain the Paramedic certification, prior to March 2019. Due to the 12 month performance period for AFG funds, this application will seek funding to support training for approximately 30 of the 103 ALS providers who need the Paramedic certification upgrade. FRD estimates this is the maximum number that can be trained within the allotted 12 month performance period, if awarded.

FISCAL IMPACT:

Grant funding in the amount of \$393,615, including \$51,341 in Local Cash Match will be requested from the U.S. Department of Homeland Security Assistance to Firefighters Grant to support EMS training to upgrade approximately 30 ALS providers who currently hold an EMT-Intermediate level certification to the Paramedic level certification in order to meet state requirements. The required Local Cash Match is available from the Federal-State Grant Fund. This action does not increase the expenditure level of the Federal-State Grant Fund, as funds are held in reserve for unanticipated grant awards. This grant does allow the recovery of indirect costs; however because this funding

Board Agenda Item  
January 12, 2016

opportunity is highly competitive, the Fire and Rescue Department has elected to omit inclusion of indirect costs to maximize the proposal's competitive position.

CREATION OF NEW POSITIONS:

No new positions will be created by this grant.

ENCLOSED DOCUMENTS:

Attachment 1 – Summary of Grant Proposal

STAFF:

David M. Rohrer, Deputy County Executive  
Chief Richard R. Bowers, Fire and Rescue Department  
Assistant Chief John J. Caussin, Jr., Fire and Rescue Department  
Assistant Chief John A. Burke, Fire and Rescue Department  
Assistant Chief Garrett A. Dyer, Fire and Rescue Department  
Chinaka A. Barbour, Grants Coordinator, Fire and Rescue Department

## ASSISTANCE TO FIREFIGHTERS GRANT (AFG) SUMMARY OF GRANT PROPOSAL

Please note, the actual grant application has not yet been completed; therefore, this summary has been provided detailing the specifics of the application.

<b>Grant Title:</b>	Assistance to Firefighters Grant (AFG)
<b>Funding Agency:</b>	U.S. Department of Homeland Security
<b>Applicant:</b>	Fairfax County Fire and Rescue Department (FRD)
<b>Purpose of Grant:</b>	This grant will fund Emergency Medical Services (EMS) training to upgrade authorized Advanced Life Support (ALS) providers who currently hold an EMT-Intermediate level certification to Paramedic certifications (EMT I-P). This transition is necessary to meet the national model for EMS training, upcoming state requirements and health insurance provider credentialing, which will no longer recognize the EMT-Intermediate certification for ALS providers after March 31, 2019.
<b>Funding Amount:</b>	Funding in the amount of \$393,615, including \$51,341 in Local Cash Match.
<b>Proposed Use of Funds:</b>	Funding will support the required training to upgrade approximately 30 ALS authorized providers who currently hold an EMT-Intermediate level certification. There are 103 ALS providers in the County who do not have the Paramedic level certification. Due to the 12 month performance period for AFG funding, FRD estimates that this is the maximum number that can be trained within the performance period.
<b>Target Population:</b>	Residents and visitors of Fairfax County and Fairfax County Fire and Rescue Department personnel. This initiative will increase the safety and awareness of fire department personnel, allowing them to more effectively respond to the needs of residents and visitors of Fairfax County.
<b>Performance Measures:</b>	The success of this project will be based on three outcomes: <ol style="list-style-type: none"> <li>1) Thirty providers currently at EMT- Intermediate will become EMT- Paramedic.</li> <li>2) Increase the number of providers certified to provide emergency medical services at the ALS level.</li> <li>3) Continue to provide advanced level Emergency Medical Services to residents and visitors of Fairfax County.</li> </ol>
<b>Grant Period:</b>	The performance period is typically one year from the date of the award.

ADMINISTRATIVE – 6

Extension of Review Period for 2232 Applications (Hunter Mill, Mount Vernon, and Springfield Districts)

ISSUE:

Extension of review period for 2232 applications to ensure compliance with review requirements of *Section 15.2-2232 of the Code of Virginia*.

RECOMMENDATION:

The County Executive recommends that the Board extend the review period for the following applications: 2232-H15-10, 2232-V15-15, 2232-S15-9.

TIMING:

Board action is required on January 12, 2016, to extend the review period of the applications noted above before their expiration date.

BACKGROUND:

Subsection B of *Section 15.2-2232 of the Code of Virginia* states: "Failure of the commission to act within 60 days of a submission, unless the time is extended by the governing body, shall be deemed approval." Subsection F of *Section 15.2-2232 of the Code of Virginia* states: "Failure of the commission to act on any such application for a telecommunications facility under subsection A submitted on or after July 1, 1998, within 90 days of such submission shall be deemed approval of the application by the commission unless the governing body has authorized an extension of time for consideration or the applicant has agreed to an extension of time. The governing body may extend the time required for action by the local commission by no more than 60 additional days. If the commission has not acted on the application by the end of the extension, or by the end of such longer period as may be agreed to by the applicant, the application is deemed approved by the commission." The need for the full time of an extension may not be necessary, and is not intended to set a date for final action.

The review period for the following applications should be extended:

Board Agenda Item  
January 12, 2016

- 2232-H15-10      Metropolitan Washington Airports Authority / Virginia Department of  
Rail and Public Transportation / Washington Metropolitan Area  
Transit Authority  
No Address Assigned  
Reston, VA  
Hunter Mill District  
Accepted November 20, 2015  
Extend to July 19, 2016
- 2232-V15-15      ExteNet Systems o/b/o Verizon Wireless  
8504 Fort Hunt Road  
Alexandria, VA  
Mount Vernon District  
Accepted October 30, 2015  
Extend to March 28, 2016
- 2232-S15-9      Verizon Wireless  
9211 Old Keene Mill Road  
Burke, VA  
Springfield District  
Accepted November 3, 2015  
Extend to April 1, 2016

FISCAL IMPACT:  
None

ENCLOSED DOCUMENTS:  
None

STAFF:  
Robert A. Stalzer, Deputy County Executive  
Fred R. Selden, Director, Department of Planning and Zoning, DPZ  
Chris B. Caperton, Chief, Facilities Planning Branch, Planning Division, DPZ  
Douglas W. Hansen, Senior Planner, Facilities Planning Branch, Planning Division, DPZ

Board Agenda Item  
January 12, 2016

ADMINISTRATIVE - 7

Additional Time to Commence Construction for Special Exception SE 2012-PR-005,  
Arlington Boulevard Development, LLC (Providence District)

ISSUE:

Board consideration of additional time to commence construction for SE 2012-PR-005, pursuant to the provisions of Sect. 9-015 of the Zoning Ordinance.

RECOMMENDATION:

The County Executive recommends that the Board approve eighteen (18) months additional time for SE 2012-PR-005 to April 30, 2017.

TIMING:

Routine.

BACKGROUND:

Under Sect. 9-015 of the Zoning Ordinance, if the use is not established or if construction is not commenced within the time specified by the Board of Supervisors, an approved special exception shall automatically expire without notice unless the Board approves additional time. A request for additional time must be filed with the Zoning Administrator prior to the expiration date of the special exception. The Board may approve additional time if it determines that the use is in accordance with the applicable provisions of the Zoning Ordinance and that approval of additional time is in the public interest.

On April 30, 2013, the Board of Supervisors approved SE 2012-PR-005, subject to development conditions, concurrently with PCA C-108, subject to proffers. The applications were filed in the name of Arlington Boulevard Development, LLC for the purpose of amending RZ C-108 to permit mixed-use development (including 174 multi-family residential units, 14 single-family attached residential units, and 14,800 square feet of non-residential retail uses) in the PDC district (PCA C-108), and to permit a fast food restaurant within a residential building in the PDC district (SE 2012-PR-005), on a 2.58 acre property located on the north side of Arlington Boulevard, approximately 500 feet east of the intersection of South Street, Tax Map 51-3 ((1)) 1D (See Locator Map in Attachment 1). Fast food restaurants, a Category 5 Commercial and Industrial Use of Special Impact, are permitted by special exception pursuant to Section 6-205 2. B. of the

Board Agenda Item  
January 12, 2016

Fairfax County Zoning Ordinance and are subject to the use limitations of Section 6-206 10. B. SE 2012-PR-005 was approved with a condition that the use be established or construction commenced and diligently prosecuted within thirty (30) months of the approval date unless the Board grants additional time. The development conditions for SE 2012-PR-005 are included as part of the Clerk to the Board's letter contained in Attachment 2.

On October 30, 2015, the Department of Planning and Zoning (DPZ) received a letter dated October 29, 2015, from Elizabeth D. Baker, agent for the Applicant, requesting two (2) years of additional time. On December 3, 2015, a subsequent letter dated December 3, 2015, was received revising the request to eighteen (18) months of additional time (see Attachment 3). The approved Special Exception will not expire pending the Board's action on the request for additional time.

Ms. Baker states a site plan for the property has been approved, and preliminary excavation on the site commenced in July. Construction of the parking garage is on-going pursuant to a footing and foundation permit issued by the Department of Public Works and Environmental Services (DPWES). As of this date, a final building permit for the site has not been issued but is anticipated within the next 45 days. Although construction on the site has commenced, the issuance of the final building permit would signify the formal commencement of construction. The request for additional time is being requested out of an abundance of caution to ensure the special exception remains active in the intervening time between the expiration date (October 30, 2015) and the issuance of the final building permit. In addition, following the completion of construction, it is anticipated that a period of time will elapse before a tenant is secured and the use is established. The duration of eighteen (18) months is being requested to ensure the special exception does not expire during this period of inactivity.

Staff has reviewed Special Exception SE 2012-PR-005 and has established that, as approved, it is still in conformance with all applicable provisions of the Fairfax County Zoning Ordinance to permit a fast food restaurant within a residential building in the PDC zoning district. Further, staff knows of no change in land use circumstances that would affect compliance of SE 2012-PR-005 with the special exception standards applicable to this use, or which should cause the filing of a new special exception application and review through the public hearing process. The Comprehensive Plan recommendation for the property has not changed since approval of the Special Exception. Finally, the conditions associated with the Board's approval of SE 2012-PR-005 are still appropriate and remain in full force and effect. Staff believes that approval of the request for eighteen (18) months of additional time is in the public interest and recommends that it be approved.



Board Agenda Item  
January 12, 2016

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

Attachment 1: Locator Map

Attachment 2: Letter dated May 1, 2013, to Elizabeth Baker

Attachment 3: Letters dated October 29, 2015, and December 3, 2015, to Leslie B. Johnson

STAFF:

Robert A. Stalzer, Deputy County Executive

Fred R. Selden, Director, Department of Planning and Zoning (DPZ)

Barbara C. Berlin, Director, Zoning Evaluation Division (ZED), DPZ

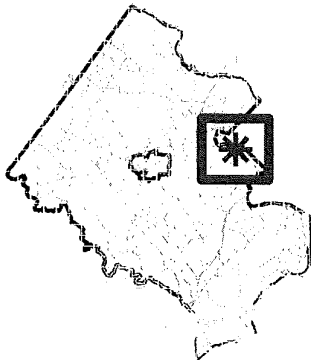
Kevin J. Guinaw, Chief, Special Projects/Applications/Management Branch, ZED, DPZ

Denise James, Chief, Environment and Development Review Branch, Planning Division, DPZ

Stephen Gardner, Staff Coordinator, ZED, DPZ

## ATTACHMENT 1

SE 2012-PR-005



Applicant:

ARLINGTON BOULE<sup>A</sup>  
DEVELOPMENT, L.L.C.

Accepted:

04/10/2012

Proposed:

FAST FOOD RESTAURANTS AND WAIVERS AND MODIFICATIONS IN THE CRD

Area:

2.58 AC OF LAND; DISTRICT - PROVIDENCE  
ZIP - 22042

Zoning Dist Sect: 07-0607, 09-0622

Art 9 Group and Use: 6-07 6-19

Located:

NORTH SIDE OF ARLINGTON BOULEVARD  
APPROXIMATELY 500 FEET EAST OF ITS  
INTERSECTION WITH SOUTH STREET

Zoning:

PDC

Plan Area:

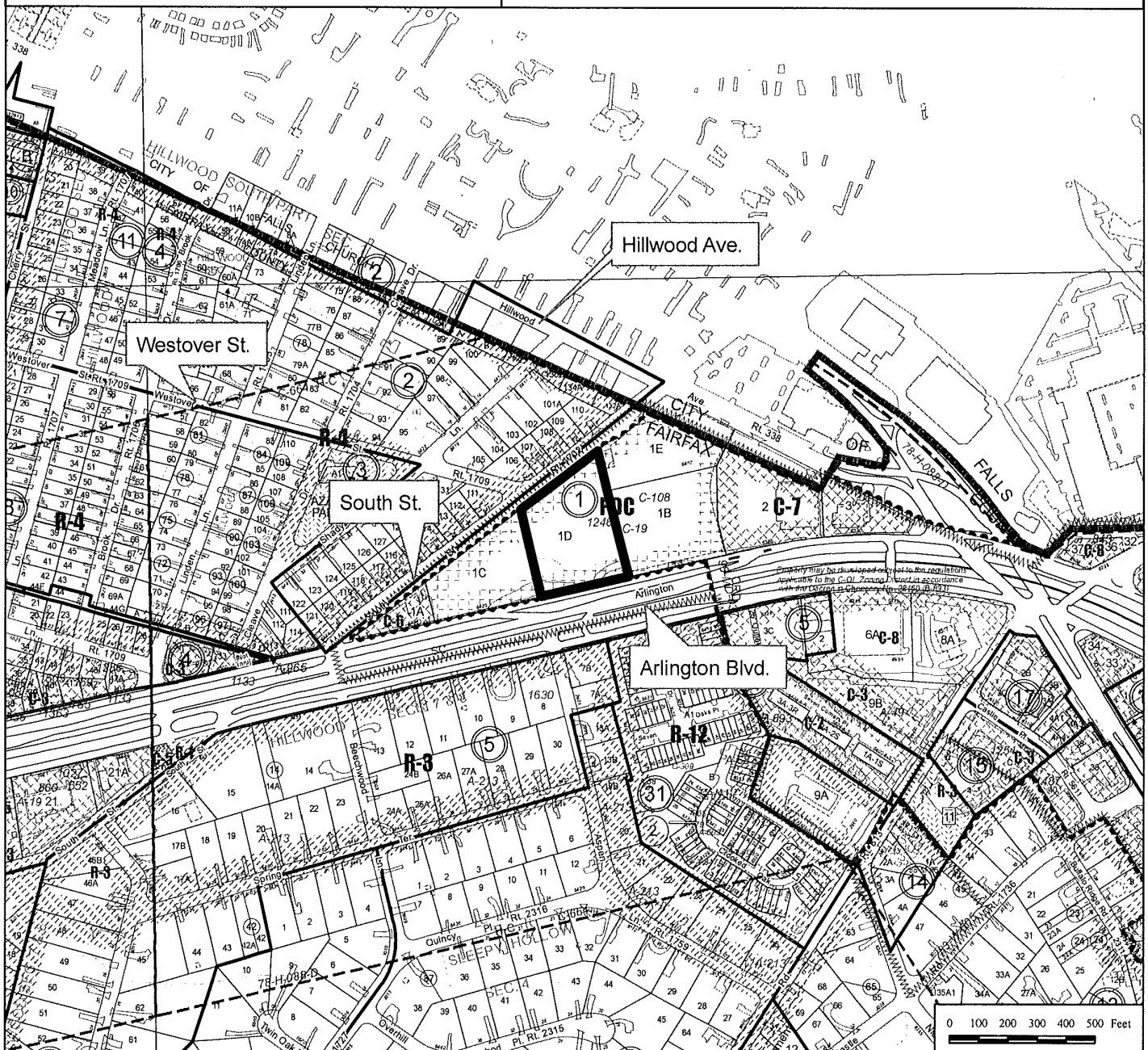
1

Overlay Dist:

CRD, SC, HC

Map Ref Num:

051-3- /01/ /0001D





## County of Fairfax, Virginia

*To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County*

May 1, 2013

Elizabeth Baker  
Walsh, Colucci, Lubeley, Emrich &  
Walsh, P.C.  
2200 Clarendon Boulevard, 13<sup>th</sup> Floor  
Arlington, VA 22201

Re: Special Exception Application SE 2012-PR-005  
(Concurrent with Proffered Condition Amendment Application PCA C-108)

Dear Ms. Baker:

At a regular meeting of the Board of Supervisors held on April 30, 2013, the Board approved Special Exception Application SE 2012-PR-005 in the name of Arlington Boulevard Development, L.L.C. The subject property is located on the N. side of Arlington Boulevard, approximately 500 feet E. of its intersection with South Street, on approximately 2.58 acres of land, zoned PDC, CRD, HC and SC in the Providence District [Tax Map 51-3 ((1)) 1D]. The Board's action permits a fast food restaurant and waivers and modifications in the CRD, pursuant to Sections 7-607 and 9-622 of the Fairfax County Zoning Ordinance, by requiring conformance with the following development conditions:

1. This Special Exception is granted for and runs with the land indicated in this application and is not transferable to other land.
2. This Special Exception is granted only for the purpose(s), structure(s) and/or use(s) indicated on the Special Exception Plat approved with the application, as qualified by these development conditions.
3. This Special Exception is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special exception shall be in substantial conformance with the approved Special Exception Plat entitled "Arlington Boulevard Development, LLC," prepared by VIKI, Inc. dated March 12, 2012, as revised through April 9, 2013, consisting of 30 sheets, and these conditions. Minor modifications to the approved Special Exception may be permitted pursuant to Par. 4 of Sect. 9-004 of the Zoning Ordinance.

Office of the Clerk to the Board of Supervisors  
12000 Government Center Parkway, Suite 533  
Fairfax, Virginia 22035

Phone: 703-324-3151 ♦ Fax: 703-324-3926 ♦ TTY: 703-324-3903  
Email: [clerktothebos@fairfaxcounty.gov](mailto:clerktothebos@fairfaxcounty.gov)  
<http://www.fairfaxcounty.gov/bosclerk>

4. A copy of this Special Exception and the Non-Residential Use Permit (Non-RUP) shall be posted in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
5. Exterior building and parking lot lighting shall comply with Par. 9 of Art. 14 of the Zoning Ordinance.
6. Hours of operation shall be limited to the following: 6:00 a.m.-12:00 a.m., daily.
7. All signage on the property shall conform to Article 12 of the Zoning Ordinance. The following types of signs shall be prohibited: inflatable signs, such as balloons; pennants; signs powered by any mechanical means; ground waver (sail banner) signs and pole signs.

This approval, contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be himself responsible for obtaining the required Non-Residential Use Permit through established procedures, and this Special Exception shall not be valid until this has been accomplished.


Pursuant to Section 9-015 of the Zoning Ordinance, this special exception shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established or construction has commenced and been diligently prosecuted. If the project is phased, development of the initial phase shall be considered to establish the use for the entire development as shown herein. The Board of Supervisors may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special exception. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

**The Board also:**

- Approved a waiver to allow the total length of a group of single-family attached dwellings to measure 245 feet where a maximum of 240 feet is permitted.
- Waived frontage improvements along Arlington Boulevard in favor of the frontage improvements shown on the Conceptual Development Plan Amendment/Final Development Plan Amendment/Special Exception (CDPA/FDPA/SE) Plat.

- Modified the trail requirements along Arlington Boulevard and South Street in favor of the sidewalks shown on the CDPA/FDPA/SE Plat.
- Modified loading space requirements in favor of the loading space shown on the CDPA/FDPA/SE Plat.
- Reaffirmed the increase in floor area ratio (FAR) above 1.5 in the PDC district.
- Waived the privacy yard requirements for single-family attached dwellings in the PDC district in favor of the open space shown on the CDPA/FDPA/SE Plat.
- Modified and waived the transitional screening and barrier requirements in favor of the plantings shown on the CDPA/FDPA/SE Plat.
- Approved the modification of the PFM requirements at the time of site plan approval to locate underground stormwater management facilities in a residential area (PFM Section 6-0303.8) subject to the waiver conditions dated August 15, 2012 (Waiver number 24549-WPFM-001-1).
- Modified the Tree Preservation Target Area requirement in favor of the plantings shown on the CDPA/FDPA/SE plat.
- Modified the PFM for drive aisles and parking space geometrics to allow structural columns to extend by no more than four percent into the required stall area in parking structures and to allow 22-foot-wide aisles and ramps in areas indicated with no parking in the CDPA/FDPA/SE plat.

Sincerely,



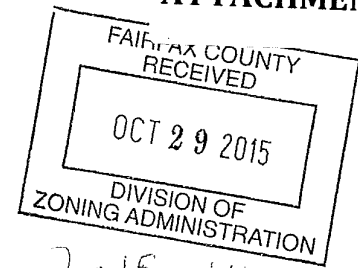
Catherine A. Chianese  
Clerk to the Board of Supervisors

SE 2012-PR-005  
May 1, 2013

-4-

cc: Chairman Sharon Bulova  
Supervisor Linda Smyth, Providence District  
Tim Shirocky, Acting Director, Real Estate Division, Dept. of Tax Administration  
Barbara C. Berlin, Director, Zoning Evaluation Division, DPZ  
Diane Johnson-Quinn, Deputy Zoning Administrator, Dept. of Planning and Zoning  
Angela K. Rodeheaver, Section Chief, Transportation Planning Division  
Donald Stephens, Transportation Planning Division  
Ken Williams, Plans & Document Control, ESRD, DPWES  
Department of Highways-VDOT  
Sandy Stallman, Park Planning Branch Manager, FCPA  
Charlene Fuhrman-Schulz, Development Officer, DHCD/Design Development Division  
Planning Commission  
Karyn Moreland, Chief Capital Projects Sections, Dept. of Transportation

Elizabeth D. Baker  
Senior Land Use Planner  
(703) 528-4700 Ext. 5414  
[ebaker@thelandlawyers.com](mailto:ebaker@thelandlawyers.com)



October 29, 2015

**Via Hand Delivery**

Leslie B. Johnson  
Zoning Administration Division  
Fairfax County Department of Planning and Zoning  
12055 Government Center Parkway, Suite 807  
Fairfax, Virginia 22035

RECEIVED  
Department of Planning & Zoning

OCT 30 2015  
Zoning Evaluation Division

Re: Request for Additional Time  
SE 2012-PR-005  
Applicant: Arlington Boulevard Development, L.L.C.  
Subject Property: Fairfax County Tax Map Reference: 51-3 ((1)) 1D

Dear Ms. Johnson:

Please accept this letter as a request for additional time in accordance with Section 9-015 of the Fairfax County Zoning Ordinance (the "Ordinance").

The referenced special exception amendment was approved by the Board of Supervisors (the "Board") on April 30, 2013, subject to development conditions. The Board's approval permits a fast food restaurant on the Subject Property. Pursuant to Section 9-015 of the Ordinance, the special exception amendment will expire thirty (30) months after the date of approval, on October 30, 2015, unless construction of the improvements has commenced and been diligently pursued. We hereby request two (2) years of additional time to complete construction.

The Owner has diligently pursued site plan approval and has an approved site plan SP 5636-003-2. The property is currently under construction and we anticipate completion in April 2017.

Based on the above anticipated construction completion date, the Owner hereby requests two (2) years of additional time for completion of construction of the proposed development. There have been no changes in circumstances that would render the prior approvals inconsistent with the public interest. The Owner has diligently pursued approval of the site plan and obtaining the necessary permits to allow construction to commence.

ATTORNEYS AT LAW

703 528 4700 ■ [WWW.THELANDLAWYERS.COM](http://WWW.THELANDLAWYERS.COM)  
2200 CLARENDON BLVD. ■ SUITE 1300 ■ ARLINGTON, VA 22201-3359

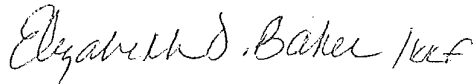
LOUDOUN 703 737 3633 ■ WOODBRIDGE 703 680 4664

Page 2

Should you have any questions regarding the above, or require additional information, please do not hesitate to give me a call. As always, I appreciate your cooperation and assistance.

Very truly yours,

WALSH, COLUCCI, LUBELEY & WALSH, P.C.

A handwritten signature in cursive script, reading "Elizabeth D. Baker /kf".

Elizabeth D. Baker  
Senior Land Use Planner

cc: Eric Fenton  
Martin D. Walsh

{A0684570.DOC / 1 Letter re additional time 000537 000027}





Elizabeth D. Baker  
Senior Land Use Planner  
(703) 528-4700 Ext. 5414  
[ebaker@thelandlawyers.com](mailto:ebaker@thelandlawyers.com)

**WALSH COLUCCI  
LUBELEY & WALSH PC**

December 3, 2015

**Via E-Mail and Hand Delivery**

Leslie B. Johnson  
Zoning Administration Division  
Fairfax County Department of Planning and Zoning  
12055 Government Center Parkway, Suite 807  
Fairfax, Virginia 22035

Re: Request for Additional Time  
SE 2012-PR-005  
Applicant: Arlington Boulevard Development, L.L.C.  
Subject Property: Fairfax County Tax Map Reference: 51-3 ((1)) 1D

Dear Ms. Johnson:

Please accept this revised letter as a request for additional time in accordance with Section 9-015 of the Fairfax County Zoning Ordinance (the "Ordinance").

The referenced special exception amendment was approved by the Board of Supervisors (the "Board") on April 30, 2013, subject to development conditions. The Board's approval permits a fast food restaurant on the Subject Property. Pursuant to Section 9-015 of the Ordinance, the special exception amendment will expire thirty (30) months after the date of approval, on October 30, 2015, unless construction of the improvements has commenced and been diligently pursued. We hereby request eighteen (18) months of additional time to complete construction.

The Owner has diligently pursued site plan approval and has an approved site plan SP 5636-003-2. The property is currently under construction and we anticipate completion in April 2017.

Based on the above anticipated construction completion date, the Owner hereby requests eighteen (18) months of additional time for completion of construction of the proposed development. There have been no changes in circumstances that would render the prior approvals inconsistent with the public interest. The Owner has diligently pursued approval of the site plan and obtaining the necessary permits to allow construction to commence.

ATTORNEYS AT LAW

703 528 4700 • [WWW.THELANDLAWYERS.COM](http://WWW.THELANDLAWYERS.COM)  
2200 CLARENDON BLVD. • SUITE 1300 • ARLINGTON, VA 22201-3359

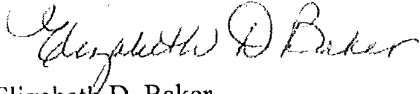
LOUDOUN 703 737 3633 • WOODBRIDGE 703 680 4664

Page 2

Should you have any questions regarding the above, or require additional information, please do not hesitate to give me a call. As always, I appreciate your cooperation and assistance.

Very truly yours,

WALSH, COLUCCI, LUBELEY & WALSH, P.C.

A handwritten signature in cursive script, appearing to read "Elizabeth D. Baker".

Elizabeth D. Baker  
Senior Land Use Planner

cc: Eric Fenton  
Martin D. Walsh

{A0684570.DOC / 1 Letter re additional time 000537 000027}

Board Agenda Item  
January 12, 2016

ADMINISTRATIVE - 8

Additional Time to Commence Construction for Special Exception SE 2011-MA-001,  
Homan Solemaninejad (Mason District)

ISSUE:

Board consideration of additional time to commence construction for SE 2011-MA-001, pursuant to the provisions of Sect. 9-015 of the Zoning Ordinance.

RECOMMENDATION:

The County Executive recommends that the Board approve six (6) months additional time for SE 2011-MA-001 to April 12, 2016.

TIMING:

Routine.

BACKGROUND:

Under Sect. 9-015 of the Zoning Ordinance, if the use is not established or if construction is not commenced within the time specified by the Board of Supervisors, an approved special exception shall automatically expire without notice unless the Board approves additional time. A request for additional time must be filed with the Zoning Administrator prior to the expiration date of the special exception. The Board may approve additional time if it determines that the use is in accordance with the applicable provisions of the Zoning Ordinance and that approval of additional time is in the public interest.

On July 12, 2011, the Board of Supervisors approved Special Exception SE 2011-MA-001, subject to development conditions. The application was filed in the name of Homan Solemaninejad for the purpose of permitting an office use (dental office) within an existing residential structure located in the R-3 zoning district for property located at 6065 and 6067 Arlington Boulevard, Tax Map 51-4 ((02)) (A) 5 and 6 (see Locator Map in Attachment 1). The office use is permitted pursuant to Section 3-304(4)(F) of the Fairfax County Zoning Ordinance. SE 2011-MA-001 was approved with a condition that the use be established or construction commenced and diligently prosecuted within thirty (30) months of the approval date unless the Board grants additional time. The development conditions for SE 2011-MA-001 are included as part of the Clerk to the Board's letter contained in Attachment 2.

Board Agenda Item  
January 12, 2016

On February 25, 2014, the Board of Supervisors approved nine (9) months of additional time, to October 12, 2014. On December 2, 2014, the Board of Supervisors approved twelve (12) months of additional time, to October 12, 2015. On October 5, 2015, the Department of Planning and Zoning (DPZ) received a letter dated October 5, 2015, from Thomas F. Conlon, Jr., agent for the Applicant, requesting six (6) months of additional time (see Attachment 3). The approved Special Exception will not expire pending the Board's action on the request for additional time.

As part of the justification for the February 25, 2014 request, Mr. Conlon cited the need to file a complete site plan, as opposed to a minor site plan, and the need to obtain a determination of substantial conformance from the Zoning Administrator for modifications to the stormwater facilities and landscaping, as the basis for the additional time request. As part of the justification for the December 2, 2014 request, Mr. Conlon stated the inability to obtain necessary sight distance easements, and the inability to obtain permission for minor off-site grading from an adjoining property owner, have resulted in design modifications to the proposed site entrance and to the public service road which provides access. These issues have since been resolved, and the site plan received conditional approval on October 16, 2015. Mr. Conlon now states the only remaining outstanding issues are the approval of the performance bond and the approval of the stormwater management agreement. The request for an additional time of six (6) months will allow the finalization of these issues, the issuance of permits, and the commencement of construction.

Staff has reviewed Special Exception SE 2011-MA-001 and has established that, as approved, it is still in conformance with all applicable provisions of the Fairfax County Zoning Ordinance to permit an office use in the R-3 district. Further, staff knows of no change in land use circumstances that affects compliance of SE 2011-MA-001 with the special exception standards applicable to this use, or which should cause the filing of a new special exception application and review through the public hearing process. The Comprehensive Plan recommendation for the property has not changed since approval of the Special Exception. Finally, the conditions associated with the Board's approval of SE 2011-MA-001 are still appropriate and remain in full force and effect. Staff believes that approval of the request for six (6) months additional time is in the public interest and recommends that it be approved.

FISCAL IMPACT:  
None

Board Agenda Item  
January 12, 2016

ENCLOSED DOCUMENTS:

Attachment 1: Locator Map

Attachment 2: Letter dated November 9, 2011, to Homan Solemaninejad

Attachment 3: Letter dated October 5, 2015, to Leslie B. Johnson

STAFF:

Robert A. Stalzer, Deputy County Executive

Fred R. Selden, Director, Department of Planning and Zoning (DPZ)

Barbara C. Berlin, Director, Zoning Evaluation Division (ZED), DPZ

Kevin J. Guinaw, Chief, Special Projects/Applications/Management Branch, ZED, DPZ

Denise James, Chief, Environment and Development Review Branch, Planning Division, DPZ

Stephen Gardner, Staff Coordinator, ZED, DPZ

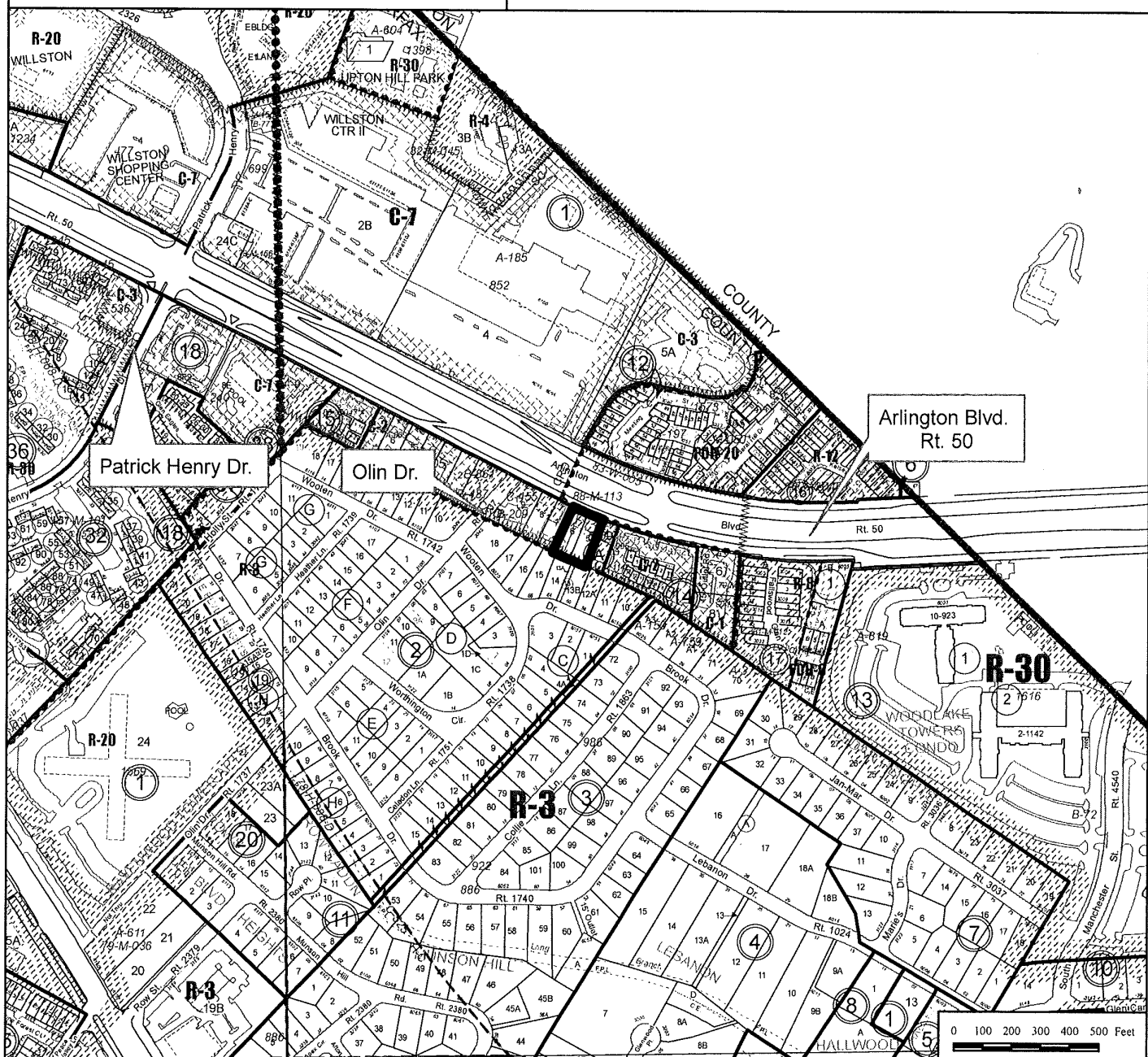
# Special Exception

SE 2011-MA-001



Applicant: HOMAN SOLEMANI  
Accepted: 02/16/2011  
Proposed: DENTAL OFFICE  
Area: 20800 SF OF LAND; DISTRICT - MASON  
Zoning Dist Sect: 03-0304  
Art 9 Group and Use: 5-17  
Located: 6065 & 6067 ARLINGTON BOULEVARD  
Zoning: R- 3  
Plan Area: 1  
Overlay Dist: CRD SC  
Map Ref Num: 051-4- /02/A /0005 /02/A /0006

ATTACHMENT 1





## County of Fairfax, Virginia

*To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County*

**Revised letter (Corrected application number)**

November 9, 2011

Homan Solemaninejad  
PO Box 7186  
Arlington, VA 22207

Re: Special Exception Application SE 2011-MA-001

Dear Mr. Solemaninejad:

At a regular meeting of the Board of Supervisors held on July 12, 2011, the Board approved Special Exception Application SE 2011-MA-001 in the name of Homan Solemaninejad. The subject property is located at 6065 and 6067 Arlington Boulevard on approximately 20,800 square feet of land, zoned R-3, CRD and SC in the Mason District [Tax Map Tax Map 51-4 ((2)) (A) 5 and 6]. The Board's action permits a dental office, pursuant to Section 3-304 of the Fairfax County Zoning Ordinance, by requiring conformance with the following development conditions:

1. This Special Exception is granted for and runs with the land indicated in this application and is not transferable to other land.
2. A copy of this Special Exception and the Non-Residential Use Permit (Non-RUP) SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
3. This Special Exception is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special exception plat approved with the application, as qualified by these development conditions.

---

Office of the Clerk to the Board of Supervisors  
12000 Government Center Parkway, Suite 533  
Fairfax, Virginia 22035

Phone: 703-324-3151 ♦ Fax: 703-324-3926 ♦ TTY: 703-324-3903  
Email: [clerktothebos@fairfaxcounty.gov](mailto:clerktothebos@fairfaxcounty.gov)  
<http://www.fairfaxcounty.gov/bosclerk>

4. This Special Exception is subject to the provisions of Article 17, Site Plans, as may be determined by the Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to the special exception shall be in substantial conformance with the approved Special Exception (SE) Plat, entitled, "Lots 5 and 6, Lee Boulevard Heights, Mason District, Fairfax, VA", prepared by Cervantes and Associates, P.C., dated June 1, 2011, and these conditions. Minor modifications to the approved special exception may be permitted pursuant to Par. 4 of Sect. 9-004 of the Zoning Ordinance.
5. The maximum number of employees on-site at any one time shall be five.
6. The maximum hours of operation shall be from 8:00 a.m. to 6:00 p.m., Monday-Saturday.
7. One monument sign which conforms to Section 12 of the Zoning Ordinance (Sect. 12-208 2. M) may be provided in the location indicated on the Special Exception Plat (the northern portion of the property in front of the building).
8. The driveway entrance shall be widened to meet commercial standards as indicated on the SE Plat, subject to final approval by the Virginia Department of Transportation (VDOT).
9. Off-street parking spaces shall be provided as shown on the SE Plat to Public Facilities Manual standards.
10. A six-foot high, solid wood fence (with a gate) shall be provided along the southern edge of the parking area. A landscape plan in substantial conformance with that depicted on the SE Plat shall be provided as part of the site plan submission and shall be reviewed and approved by the Urban Forest Management Division, DPWES. The landscaping and barrier shall be maintained as specified in Sect. 13-106 of the Zoning Ordinance.
11. If a waiver of stormwater management is not granted by the Department of Public Works and Environmental Services (DPWES), stormwater management shall be provided to the satisfaction of DPWES at the time of site plan approval. An area has been designated for stormwater management on the SE Plat (identified as "stormwater management if required"), if required stormwater management facilities can not be provided in substantial conformance with the SE Plat, the applicant may be required to submit a Special Exception Amendment.

This approval, contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be himself responsible for obtaining the



required Non-Residential Use Permit through established procedures, and this Special Exception shall not be valid until this has been accomplished.

The approval of this Special Exception does not interfere with, abrogate or annul any easement, covenants, or other agreements between parties, as they may apply to the property subject to this application.

Pursuant to Section 9-015 of the Zoning Ordinance, this special exception shall automatically expire, without notice, 30 months after the date of approval unless, at a minimum, the use has been established or construction has commenced and been diligently prosecuted. The Board of Supervisors may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special exception. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

**The Board also:**

- Modified the transitional screening yard and barrier requirement in favor of that depicted on the SE Plat, and as conditioned

Sincerely,



Nancy Vehrs  
Clerk to the Board of Supervisors  
NV/ph

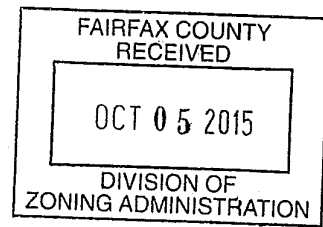
Cc: Chairman Sharon Bulova  
Supervisor Penny Gross, Mason District  
Janet Coldsmith, Director, Real Estate Division, Dept. of Tax Administration  
Barbara C. Berlin, Director, Zoning Evaluation Division, DPZ  
Diane Johnson-Quinn, Deputy Zoning Administrator, Dept. of Planning and Zoning  
Angela K. Rodeheaver, Section Chief, Transportation Planning Division  
Ken Williams, Plans & Document Control, ESRD, DPWES  
Department of Highways-VDOT  
Sandy Stallman, Park Planning Branch Manager, FCPA  
Charlene Fuhrman-Schulz, Development Officer, DHCD/Design Development Division  
District Planning Commissioner  
Karyn Moreland, Chief Capital Projects Sections, Dept. of Transportation

# CERVANTES & ASSOCIATES, P.C.

Engineers • Planners • Surveyors

## Principals

Rafael T. Cervantes, P.E.  
Thomas F. Conlon, Jr., C.L.S.



October 5, 2015

Leslie B. Johnson, Zoning Administrator  
Department of Planning and Zoning  
Zoning Administration Division  
12055 Government Center Parkway, Suite 801  
Fairfax, VA 22035-5508

RECEIVED  
Department of Planning & Zoning  
OCT 05 2015  
Zoning Evaluation Division

## Re: Extension Request

Special Exception SE2011-MA-001-Homan Solemaninejad  
#6065-6067 Arlington Boulevard  
Tax Map Ref: 051-4 ((2)) (A) 5 & 6  
Zoning District: R-3, CRD & SC

Dear Ms. Johnson;

We are in receipt of a notice of a forthcoming expiration on October 12, 2015, (copy attached) of the previously granted extension of the Special Exception as identified above. During the extension period we have resolved the various outstanding design issues that were the basis of requesting the previous plan extension. There is only one remaining plan pre-approval condition to be satisfied to allow final plan approval. More information will follow as justification for requesting an additional extension of six months for site plan approval and to commence construction.

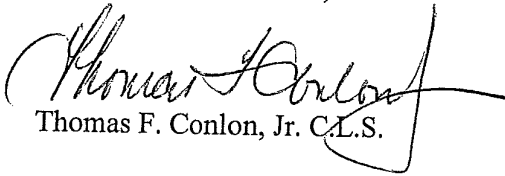
Plan inserts were made on April 24, 2015 having addressed all outstanding design issues. Subsequent to those inserts, the plan sets have received department approval signatures and are currently being held in the County Records Department awaiting final approval signature by the Branch Manager. All plan pre-approval conditions have been met with the one exception of the related bond. The contractor has submitted additional documentation to the Bonds and Agreements Department per their request. Upon approval of the bond and associated stormwater management agreement, it is our opinion that the Branch Manager would then approve and distribute the plan which would allow the construction permits process to begin.

Page 2  
October 5, 2015  
SE 2011-MA-001  
Extension Request

It is anticipated that the Bonds and Agreements Department will soon finalize the documents currently being reviewed by them and applications for construction permits can then be submitted. The owner of the property has contracted with a permits expeditor under a private agreement to facilitate the processing of all construction permits. Since there is only one remaining plan approval condition to be met which may not occur prior to the Special Exception expiration date of October 12, 2015, we respectfully request a six-month extension to satisfy all plan approval conditions and to commence construction.

Thank you for your consideration of this request. We look forward to a favorable response and do not hesitate to contact us should you have any questions.

Respectfully,  
Cervantes & Associates, P.C.



Thomas F. Conlon, Jr. C.L.S.

Attachment:

Board Agenda Item  
January 12, 2016

ADMINISTRATIVE - 9

Supplemental Appropriation Resolution AS 16152 for the Fire and Rescue Department to Accept Grant Funding from the 2015 State Homeland Security Grant Program Through the United States Department of Homeland Security

ISSUE:

Board of Supervisor's approval of Supplemental Appropriation Resolution AS 16152 in the amount of \$150,000 for the Fire and Rescue Department (FRD) to accept funding from the 2015 State Homeland Security Grant Program (SHSGP) through the United States Department of Homeland Security (DHS). Funding will be used to maintain existing Virginia Communications Cache team member qualifications and train new members, purchase supplies to conduct training programs, and purchase replacement equipment and miscellaneous repair parts. DHS provides financial assistance to address the unique planning, training, equipment, and exercise needs of high-threat, high-density urban areas to assist them in building an enhanced and sustainable capacity to prevent, respond to, and recover from acts of terrorism. The program period is September 1, 2015 through May 31, 2017. No Local Cash Match is required.

RECOMMENDATION:

The County Executive recommends that the Board approve Supplemental Appropriation Resolution AS 16152 in the amount of \$150,000. Funding will be used to maintain existing Virginia Communications Cache team member qualifications and train new members, purchase supplies to conduct training programs, and purchase replacement equipment and miscellaneous repair parts. No new positions will be created with this grant and no Local Cash Match is required.

TIMING:

Board approval is requested on January 12, 2016.

BACKGROUND:

The mission of the Department of Homeland Security is to enhance the ability of state, local, and tribal governments to prepare, prevent, respond to, and recover from terrorist attacks and other disasters. The Homeland Security Grant Program (HSGP) is a primary funding mechanism for building and sustaining national preparedness capabilities.

This core assistance program provides states with funds to build capabilities at the local level through planning, organization, equipment, training, and exercise activities. HSGP also supports the implementation of State Homeland Security strategies and key elements of the national preparedness architecture, including the

Board Agenda Item  
January 12, 2016

National Preparedness Guidelines, the National Incident Management System and the National Response Framework.

Interoperable Communications is one of the key target capabilities for the State Homeland Security Program and a key element of the national preparedness architecture. The Virginia Communications Cache concept is identified as a key component for strategic communications.

Funds will be utilized to maintain existing Virginia Communications Cache team member qualifications and train new members who are replacing outgoing members, as well as support the purchase of supplies to conduct training programs. Funding will also be utilized to purchase replacement equipment and miscellaneous repair parts. Continued funding for training and equipment is critical to maintaining team readiness to respond to the Commonwealth's tactical and interoperable communications needs.

FISCAL IMPACT:

Grant funding in the amount of \$150,000 is available from the 2015 State Homeland Security Grant Program through the United States Department of Homeland Security. Funding will support the Virginia Communications Cache. No Local Cash Match is required. This grant does allow the recovery of indirect costs and FRD anticipates that the County will recover \$1,257 in indirect costs for this grant. This action does not increase the expenditure level in the Federal-State Grant Fund, as funds are held in reserve for Homeland Security grant awards received in FY 2016.

CREATION OF NEW POSITIONS:

No positions will be created by this grant.

ENCLOSED DOCUMENTS:

Attachment 1 – Supplemental Appropriation Resolution AS 16152

Attachment 2 – Grant Award Document

STAFF:

David M. Rohrer, Deputy County Executive  
Fire Chief Richard R. Bowers, Fire and Rescue Department  
Assistant Chief John J. Caussin, Jr., Fire and Rescue Department  
Assistant Chief John A. Burke, Fire and Rescue Department  
Assistant Chief Garrett A. Dyer, Fire and Rescue Department  
Chinaka A. Barbour, Grants Coordinator, Fire and Rescue Department

**SUPPLEMENTAL APPROPRIATION RESOLUTION AS 16152**

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Government Center at 12000 Government Center Parkway, Fairfax Virginia on January 12, 2016, at which a quorum was present and voting, the following resolution was adopted:

**BE IT RESOLVED** by the Board of Supervisors of Fairfax County, Virginia, that in addition to appropriations made previously for FY 2016, the following supplemental appropriation is authorized and the Fiscal Planning Resolution is amended accordingly:

Appropriate to:

Fund: 500-C50000, Federal-State Grant Fund

Agency: G9292, Fire and Rescue Department \$150,000

Grant: 1HS0082-2015, VA Radio Cache Support (FRD)

Reduce Appropriation to:

Agency: G8787, Unclassified Administrative Expenses \$150,000

Fund: 500-C50000, Federal-State Grant Fund

Source of Funds: U.S. Department of Homeland Security, \$150,000

A Copy - Teste:

---

Catherine A. Chianese  
Clerk to the Board of Supervisors

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Homeland Security and Emergency Management Agency



Muriel Bowser  
Mayor

Chris T. Geldart  
Director

## Subaward

SUBPROGRAM  
FY 2015 Urban Areas Security Initiative

SUBRECIPIENT  
Fairfax County Fire and Rescue Department

SUBAWARD TITLE  
Radio Cache Support - NoVA (VA 5%)

SUBAWARD ID  
15UASI529-08

SUBAWARD AMOUNT  
\$150,000.00

SUBAWARD PERFORMANCE PERIOD  
09/01/2015-05/31/2017

SUBRECIPIENT DUNS  
074837626 Fairfax County Virginia

FEDERAL AWARD IDENTIFICATION NUMBER  
EMW-2015-SS-00019

FEDERAL AWARD DATE  
08/11/2015

FEDERAL AWARDOING AGENCY  
U.S. Department of Homeland Security  
Federal Emergency Management Agency

FEDERAL AWARD TOTAL AMOUNT  
\$58,141,500.00

CFDA  
97.067 Homeland Security Grant Program


STATE ADMINISTRATIVE AGENT /  
PASS-THROUGH ENTITY  
District of Columbia Homeland Security and  
Emergency Management Agency

As the duly authorized representative of the above-listed organization, you hereby accept the subaward and certify that you have read and understand the terms and conditions presented in the following documents:

- FY 2015 Homeland Security Grant Program Notice of Funding Opportunity
- FY 2015 District of Columbia Homeland Security and Emergency Management Agency Terms and Conditions
- FY 2015 DHS Homeland Security Grant Program Agreement Articles
- FY 2015 DHS Standard Terms and Conditions
- 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- Subrecipient Handbook

AWARDING OFFICIAL  
Chris T. Geldart  
Director

SUBRECIPIENT OFFICIAL  
Edward L. Long  
County Executive  
Fairfax County Government

  
Signature Date 12/04/2015

Signature Date

Board Agenda Item  
January 12, 2016

ADMINISTRATIVE – 10

Streets into the Secondary System (Dranesville and Hunter Mill Districts)

ISSUE:

Board approval of streets to be accepted into the State Secondary System.

RECOMMENDATION:

The County Executive recommends that the street(s) listed below be added to the State Secondary System.

<b><u>Subdivision</u></b>	<b><u>District</u></b>	<b><u>Street</u></b>
Chesterbrook Manor	Dranesville	Perlich Street
		Old Chesterbrook Road (Route 690) (Supplemental Right-of-Way Only)
Chesterwood Estates	Dranesville	Chesterwood Glen Lane
		Springvale Road (Route 674) (Supplemental Right-of-Way Only)
Avis Subdivision	Hunter Mill	Avis Court
		Creek Crossing Road (Route 724) (Supplemental Right-of-Way Only)

TIMING:

Routine.

BACKGROUND:

Inspection has been made of these streets, and they are recommended for acceptance into the State Secondary System.

FISCAL IMPACT:

None.



Board Agenda Item  
January 12, 2016

ENCLOSED DOCUMENTS:

Attachment 1 – Street Acceptance Forms

STAFF:

Robert A. Stalzer, Deputy County Executive

James W. Patteson, Director, Department of Public Works and Environmental  
Services (DPWES)

William D. Hicks, P.E., Director, Land Development Services, DPWES

# Street Acceptance Form For Board Of Supervisors Resolution - June 2005

**FAIRFAX COUNTY BOARD OF SUPERVISORS  
FAIRFAX, VA**

Pursuant to the request to inspect certain streets in the subdivisions as described, the Virginia Department of Transportation has made inspections, and recommends that same be included in the secondary system.

**VIRGINIA DEPARTMENT OF TRANSPORTATION - OFFICE  
OF THE ENGINEERING MANAGER, FAIRFAX, VIRGINIA**

REQUEST TO THE ENGINEERING MANAGER, FOR INCLUSION OF CERTAIN SUBDIVISION STREETS INTO THE STATE OF VIRGINIA SECONDARY ROAD SYSTEM.

**PLAN NUMBER:** 7519-SD-003

**SUBDIVISION PLAT NAME:** Chesterbrook Manor

**COUNTY MAGISTERIAL DISTRICT:** Dranesville

**ENGINEERING MANAGER:** Imad A. Salous, P.E.

BY: Nasira Alphonse

**FOR OFFICIAL USE ONLY**

**DATE OF VDOT INSPECTION APPROVAL:** 10/20/2015

STREET NAME	LOCATION		LENGTH MILE
	FROM	TO	
Perlich Street	CL Divine Street (Route 2824) - 524' NW CL Dempsey Street (Route 3442)	657' NW to End of Cul-de-Sac	0.12
Old Chesterbrook Road (Route 690) (Supplemental Right-of-Way Only)	495' W CL Dempsey Street (Route 3442)	150' W to End of Dedication	0.0

**NOTES:**

**TOTALS:** 0.12

Perlich Street: 5' Concrete Sidewalk on Both Sides to be maintained by VDOT.

# Street Acceptance Form For Board Of Supervisors Resolution - June 2005

**FAIRFAX COUNTY BOARD OF SUPERVISORS  
FAIRFAX, VA**

Pursuant to the request to inspect certain streets in the subdivisions as described, the Virginia Department of Transportation has made inspections, and recommends that same be included in the secondary system.

**ENGINEERING MANAGER:** Imad A. Salous, P.E.

**BY:** Nadia Alphonse

**VIRGINIA DEPARTMENT OF TRANSPORTATION - OFFICE  
OF THE ENGINEERING MANAGER, FAIRFAX, VIRGINIA**

REQUEST TO THE ENGINEERING MANAGER, FOR INCLUSION OF CERTAIN SUBDIVISION STREETS INTO THE STATE OF VIRGINIA SECONDARY ROAD SYSTEM.

**PLAN NUMBER:** 7016-SD-001

**SUBDIVISION PLAT NAME:** Chesterwood Estates

**COUNTY MAGISTERIAL DISTRICT:** Dranesville

**FOR OFFICIAL USE ONLY**

**DATE OF VDOT INSPECTION APPROVAL:** 10/15/2015

STREET NAME	LOCATION		LENGTH MILE
	FROM	TO	
Chesterwood Glen Lane	CL Springvale Road (Route 674) - 321' N CL Falls Pointe Drive (Route 8680)	460' SE to Beginning of Temporary Turnaround Easement	0.09
Springvale Road (Route 674) (Supplemental Right-of-Way Only)	10' N CL Fall Pointe Drive (Route 8680)	335' N to End of Dedication	0.0
<b>NOTES:</b>			<b>TOTALS:</b> 0.09

# Street Acceptance Form For Board Of Supervisors Resolution - June 2005

<b>FAIRFAX COUNTY BOARD OF SUPERVISORS</b> <b>FAIRFAX, VA</b> Pursuant to the request to inspect certain streets in the subdivisions as described, the Virginia Department of Transportation has made inspections, and recommends that same be included in the secondary system.		<b>VIRGINIA DEPARTMENT OF TRANSPORTATION - OFFICE OF THE ENGINEERING MANAGER, FAIRFAX, VIRGINIA</b> REQUEST TO THE ENGINEERING MANAGER, FOR INCLUSION OF CERTAIN SUBDIVISION STREETS INTO THE STATE OF VIRGINIA SECONDARY ROAD SYSTEM. <b>PLAN NUMBER:</b> 8347-SD-01 <b>SUBDIVISION PLAT NAME:</b> Avis Subdivision <b>COUNTY MAGISTERIAL DISTRICT:</b> Hunter Mill	
<b>ENGINEERING MANAGER:</b> Imad A. Salous, P.E. <b>BY:</b> <u>Nadia Alphonse</u>		<b>FOR OFFICIAL USE ONLY</b> <b>DATE OF VDOT INSPECTION APPROVAL:</b> <u>10/26/2015</u>	

STREET NAME	LOCATION		LENGTH MILE
	FROM	TO	
Avis Court	CL Creek Crossing Road (Route 724) - 325' SE of CL Ridge Lane (Route 817)	333' to End of Cul-de-Sac	0.06
Creek Crossing Road (Route 724) (Supplemental Right-of-Way Only)	180' SE CL of Ridge Lane (Route 817)	276' SE to End of Dedication	0.0
<b>NOTES:</b>			<b>TOTALS:</b>
Creek Crossing Road: 4' Concrete Sidewalk on West Side to be maintained by VDOT.			0.06

Board Agenda Item  
January 12, 2016

ACTION – 1

Approval of the Board of Supervisors' Meeting Schedule for Calendar Year 2016 and Authorization for the Chairman to Postpone a Scheduled Meeting in the Event of Weather or Other Hazardous Conditions

ISSUE:

Board approval of its meeting schedule for January through December 2016.

RECOMMENDATION:

The County Executive recommends that the Board (1) approve the Board meeting schedule for January through December 2016 and (2) authorize the Chairman to defer any scheduled meeting to the Tuesday following a scheduled Board meeting if the Chairman, or the Vice Chairman if the Chairman is unable to act, finds and declares that the weather or other conditions are such that it is hazardous for members to attend.

TIMING:

Immediate. Virginia law requires the Board to adopt its regular schedule of meetings for calendar year 2016 at the first meeting in January.

BACKGROUND:

Previously, on July 28, 2015, staff presented the Board with a preliminary meeting schedule for calendar year 2016 for planning purposes, but Virginia Code Section 15.2-1416 requires the governing body of each county to establish the days, times, and places of its regular meetings at the annual meeting, which is the first meeting of the year. For that reason, the meeting schedule for calendar year 2016 is being presented to the Board again for formal approval. Scheduled meetings may be adjourned and reconvened as the Board may deem necessary, and the Board may schedule additional meetings or adjust the schedule of meetings approved at the annual meeting, after notice required by Virginia law, as the need may rise.

In addition, Virginia Code Section 15.2-1416 authorizes the Board to fix the day or days to which a regular meeting shall be continued if the Chairman, or the Vice-Chairman if the Chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend a regularly scheduled meeting. If those provisions are made, then all hearings and other matters previously

Board Agenda Item  
January 13, 2015

advertised for that date shall be conducted at the continued meeting. In order to take advantage of that authority in such an emergency, staff recommends that the Board also authorize the Chairman to continue any scheduled meeting to the following Tuesday when weather or other conditions make attendance hazardous. In that circumstance, the Board then would consider the agenda for that rescheduled meeting on that following Tuesday without further advertisement.

FISCAL IMPACT:  
None.

ENCLOSED DOCUMENT:

Attachment 1 – Proposed Meeting Schedule for Calendar Year 2016

Attachment 2 – Virginia Code Section 15.2-1416

Attachment 3 – Proposed Resolution Adopting Meeting Schedule and Authorizing the  
Chairman to Reschedule a Meeting in an Emergency

STAFF:

Catherine A. Chianese, Assistant County Executive and Clerk to the Board of  
Supervisors

# 2016 Board of Supervisors Meeting Schedule

<b>January 12, 2016</b>
<b>February 2, 2016</b>
<b>February 16, 2016</b> Public Comment
<b>March 1, 2016</b>
<b>March 15, 2016</b>
<b>April 5, 2016</b> 9:30 to 4:00 pm Board Meeting 4:00 p.m. Budget Public Hearing
<b>April 6 – April 7, 2016</b> 1:00 pm – Budget Public Hearings
<b>April 19, 2016</b> Budget Markup
<b>April 26, 2016</b> Includes Budget Adoption Public Comment

<b>May 17, 2016</b>
<b>June 7, 2016</b>
<b>June 21, 2016</b> Public Comment
<b>July 12, 2016</b>
<b>July 26, 2016</b> Public Comment
<b>September 20, 2016</b>
<b>October 18, 2016</b> Public Comment
<b>November 1, 2016</b>
<b>December 6, 2016</b> Public Comment

## ATTACHMENT 2

### **§ 15.2-1416. Regular meetings.**

The governing body shall assemble at a public place as the governing body may prescribe, in regular session in January for counties and in July for cities and towns. Future meetings shall be held on such days as may be prescribed by resolution of the governing body but in no event shall less than six meetings be held in each fiscal year.

The days, times and places of regular meetings to be held during the ensuing months shall be established at the first meeting which meeting may be referred to as the annual or organizational meeting; however, if the governing body subsequently prescribes any public place other than the initial public meeting place, or any day or time other than that initially established, as a meeting day, place or time, the governing body shall pass a resolution as to such future meeting day, place or time. The governing body shall cause a copy of such resolution to be posted on the door of the courthouse or the initial public meeting place and inserted in a newspaper having general circulation in the county or municipality at least seven days prior to the first such meeting at such other day, place or time. Should the day established by the governing body as the regular meeting day fall on any legal holiday, the meeting shall be held on the next following regular business day, without action of any kind by the governing body.

At its annual meeting the governing body may fix the day or days to which a regular meeting shall be continued if the chairman or mayor, or vice-chairman or vice-mayor if the chairman or mayor is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the regular meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised shall be conducted at the continued meeting and no further advertisement is required.

Regular meetings, without further public notice, may be adjourned from day to day or from time to time or from place to place, not beyond the time fixed for the next regular meeting, until the business before the governing body is completed.

Notwithstanding the provisions of this section, any city or town that holds an organizational meeting in compliance with its charter or code shall be deemed to be in compliance with this section.

(Code 1950, § 15-241; 1950, p. 8; 1954, c. 286; 1958, c. 291; 1960, c. 33; 1962, cc. 218, 623, § 15.1-536; 1964, c. 403; 1980, c. 420; 1994, cc. [371](#), [591](#); 1997, c. [587](#); 2004, c. [549](#).)



**Resolution Establishing the Board Meeting Schedule for  
Calendar Year 2016 and Authorizing the Chairman to Reschedule a  
Meeting in the Event of Weather or Other Hazardous Conditions**

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center at Fairfax, Virginia, on Tuesday, January 12, 2016, at which a meeting quorum was present and voting, the following resolution was adopted:

**WHEREAS**, Virginia Code Section 15.2-1416 requires the Board of Supervisors of Fairfax County, Virginia, to assemble at its first meeting in January to adopt a schedule of the days, times, and places of its regular meetings in calendar year 2016; and

**WHEREAS**, Virginia Code Section 15.2-1416 authorizes the Board of Supervisors of Fairfax County, Virginia, to fix the day or days to which a regularly scheduled meeting shall be continued if the Chairman, or the Vice-Chairman if the Chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the regular meeting;

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of Fairfax County

1. During Calendar Year 2016, the Board of Supervisors will meet in the Board Auditorium at 12000 Government Center Parkway, Fairfax, Virginia, on January 12, February 2, February 16, March 1, March 15, April 5, April 6, April 7, April 19, April 26, May 17, June 7, June 21, July 12, July 26, September 20, October 18, November 1, and December 6;

2. All such meetings shall generally begin at 9:30 A.M. except that the Board meetings on April 6 and 7 begin at 1 P.M.; and

3. If the Chairman, or the Vice-Chairman if the Chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend a regularly scheduled meeting, then that meeting shall be postponed and conducted

### ATTACHMENT 3

on the following Tuesday and all hearings and other matters shall be conducted at that time without further advertisement.

A Copy Teste:

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Catherine A. Chianese  
Clerk of the Board of Supervisors

Board Agenda Item  
January 12, 2016

ACTION - 2

Appointment of Members to the Fairfax County Solid Waste Authority

ISSUE:

Board of Supervisors' appointment of members to the Fairfax County Solid Waste Authority.

RECOMMENDATION:

The County Executive recommends that the Board appoint the successors to the members of the Fairfax County Solid Waste Authority.

TIMING:

Immediate. The Articles of Incorporation require the Fairfax County Solid Waste Authority members to be appointed every four years.

BACKGROUND:

According to the Articles of Incorporation of the Fairfax County Solid Waste Authority, each member of the authority's board of directors (the Authority Board) shall be appointed by the Fairfax County Board of Supervisors for a term not exceeding four years. Members shall hold office until their successors have been appointed, and any member shall be eligible for reappointment to succeed him/herself. The term of any member who is also a member of the Board of Supervisors shall expire upon his or her ceasing to hold such a position.

The following members are recommended for reappointment to the Authority Board for a four-year term:

Ms. Sharon Bulova  
Ms. Penelope A. Gross  
Mr. John C. Cook  
Mr. John W. Foust  
Mr. Patrick S. Herrity  
Ms. Catherine M. Hudgins  
Mr. Jeffrey C. McKay  
Ms. Linda Q. Smyth

Board Agenda Item  
January 12, 2016

The following new members of the Board of Supervisors are recommended for appointment to the Authority for a four-year term:

Ms. Kathy L. Smith  
Mr. Daniel G. Storck

FISCAL IMPACT:  
None

ENCLOSED DOCUMENTS:  
None

STAFF:  
Robert A. Stalzer, Deputy County Executive  
James W. Patteson, Director, Department of Public Works and Environmental Services (DPWES)  
John W. Kellas, Deputy Director, DPWES, Solid Waste Management Program

ACTION – 3

Approval of a Parking Reduction for Reston Heights (Hunter Mill District)

ISSUE:

Board of Supervisors (Board) approval of a 22.2 percent reduction (356 fewer spaces) of the required parking for the interim conditions and a 24.2 percent reduction (645 fewer spaces) of the required parking at ultimate build-out, for Reston Heights, Tax Map Number 17-3 ((21)) parcels 1, 2A, 3A, 4A, and 5A (“the Property”), Hunter Mill District.

RECOMMENDATION:

The County Executive recommends that the Board approve a parking reduction for the proposed mixed-use development at the Property pursuant to paragraph 4(B) of Section 11-102 of Chapter 112 of the *Code of the County of Fairfax, Virginia* (Zoning Ordinance), an analysis of the parking requirements for each use on the site, and the shared parking study 6734-PKS-002-1, subject to the conditions described below. Specifically, the County Executive recommends approval of a 22.2 percent reduction, totaling 356 fewer spaces, of the required parking for the interim phase and a 24.2 percent reduction, totaling 645 fewer spaces, of the required parking at ultimate build-out for the Property.

The County Executive further recommends that the Board approve the requested reductions subject to the following conditions:

1. A minimum of 1,249 parking spaces shall be maintained at all times to serve the interim build-out mix of uses where:
  - 734 spaces shall serve individual businesses and/or users.
  - 385 spaces shall be reserved exclusively for residents.
  - 130 spaces shall be reserved exclusively for the fitness center
2. The uses permitted during the interim build-out are:
  - up to 385 multi-family dwelling units (new)
  - up to 183,190 Gross Square Feet (GSF) of office use (existing)
  - up to 90,490 GSF shopping center comprised of:
    - up to 35,700 GSF of fitness center (new)
    - up to 38,790 GSF of shopping center retail (new)
    - up to 16,000 GSF of eating establishments with 576 table seats, 64 counter seats and 76 employees (new)

Board Agenda Item  
January 12, 2016

3. A minimum of 2,025 parking spaces shall be maintained at all times to serve the ultimate build-out mix of uses where:
  - 1,397 spaces shall serve individual businesses and/or users.
  - 498 spaces shall be reserved exclusively for residents.
  - 130 spaces shall be reserved exclusively for the fitness center.
4. The uses permitted under the ultimate build-out, inclusive of the interim build-out uses, are:
  - up to 498 multi-family dwelling units (new)
  - up to 183,190 GSF of office use (existing)
  - up to 245,035 GSF of office use (new)
  - up to 129,600 GSF shopping center comprised of:
    - up to 35,700 GSF of fitness center (new)
    - up to 77,900 GSF of shopping center retail (new)
    - up to 16,000 GSF of eating establishments with 576 table seats, 64 counter seats and 76 employees (new)
5. The parking supply for the interim and ultimate build-out phases shall generally be provided as shown below:

Location	Interim Build-out Condition	Ultimate Build-out Condition
Building A Garage	55 Spaces	55 Spaces
Building B Garage	661 Spaces	661 Spaces
Building C Garage	0 Spaces	862 Spaces
Building D Garage	393 Spaces	393 Spaces
Surface/On-Street	146 Spaces	54 Spaces
<b>Total</b>	<b>1,255 Spaces</b>	<b>2,025 Spaces</b>

The above allocation of spaces throughout the Property may be adjusted during the interim and ultimate phases provided the minimum number of total spaces referenced in conditions #1 and #3 are provided, as applicable.

6. Any additional uses not listed in conditions #2 and #4 shall provide parking at rates required by the Zoning Ordinance.

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7. One (1) vehicle space shall be reserved for each residential unit. These spaces shall be designated by signage and/or pavement markings. The lease agreement(s) shall specify that one (1) vehicle space shall be reserved for each residential unit. The Property Owner shall provide verification to DPWES that each residential lease states that there is one reserved space provided per residential unit, and such verification shall be provided to DPWES prior to the issuance of first RUP for each new building.
8. The Site Plan for the proposed development shall include the depiction and/or inclusion of:
  - Signage and/or pavement markings required per conditions #7 and #14;
  - Locations of parking spaces outlined per condition #5;
  - The parking reduction approval letter; and
  - A parking phasing plan that demonstrates the reduced parking rates for the interim and ultimate build-out conditions, temporary construction parking requirements established by the Director of DPWES or the Board, and the number of surplus parking spaces provided for each phase of development and during each construction phase. Construction period parking spaces may include valet, assisted, tandem and/or stacked parking as approved by DPWES.
9. The conditions of approval of this parking reduction shall run with the land and be recorded in the Fairfax County land records in a form acceptable to the County Attorney.
10. All parking utilization studies prepared in response to a request by the Zoning Administrator or the Director of DPWES shall be based on applicable requirements of *The Code of the County of Fairfax, Virginia*, and the Zoning Ordinance in effect at the time of any such study.
11. Shared parking with any additional land use(s) beyond those described herein, shall not be permitted without the submission of a new or amended parking study prepared in accordance with the applicable requirements of the Zoning Ordinance and shall be subject to the Board's approval.
12. All parking provided shall comply with the applicable requirements of Article 11 of Zoning Ordinance and the Fairfax County Public Facilities Manual, including the provisions referencing the Americans with Disabilities Act, and the Virginia Uniform Statewide Building Code. Construction period parking may utilize valet, assisted, stacked, or tandem parking for those temporary periods.

13. Parking Management Plan. The Property Owner shall implement a Parking Management Plan (PMP) to ensure that the parking reduction approved by the Board of Supervisors continues to adequately serve the uses outlined in Conditions #2 and #4 above. Accordingly, modifications, revisions, and supplements to the PMP and the monitoring plan as described below may be made in consultation and with the approval of Fairfax County Department of Transportation (FCDOT) and without the need for further Board of Supervisors approval.
- a. Initial Parking Count. No earlier than six (6) months and no later than twelve (12) months after the issuance of the first residential or non-residential use permit for the first new building on the Property, the Property Owner shall conduct an Initial Parking Occupancy Count for seven consecutive days ("Initial Parking Count") during periods of peak parking demand, to determine the number of occupied parking spaces on the Property. The Initial Parking Count shall be completed in accordance with a methodology approved by FCDOT. The Initial Parking Count may include, but is not limited to the total number on the Property of:
- spaces;
  - occupied spaces;
  - bicycles in storage rooms and racks;
  - motorcycles;
  - vehicles being used for car share, if designated;
  - vehicles with hangtags for visitors and employees; and
  - vehicles parked in violation of the Property's parking restrictions.

The Initial Parking Count shall occur on a non-holiday week and during a period when Fairfax County public schools are in session. The purpose of the Initial Parking Count shall be to establish a baseline of information for the Property Owner and FCDOT regarding the parking characteristics of the Property and to assist in the development of potential parking mitigation measures, if necessary. Results of the Initial Parking Count shall be submitted to FCDOT. The Property Owner may submit the results of the Initial Parking Count in conjunction with the submission of the annual Transportation Demand Management (TDM) report pursuant to development condition #27 or earlier at his sole discretion.

The Property Owner shall consult with FCDOT to review the results of the Initial Parking Counts and the parking mitigation measures in place at the time the Initial Parking Counts were conducted. The Property Owner and FCDOT shall assess and develop additional or alternative parking mitigation measures which may be needed to reduce any parking



problems and the likelihood of vehicles parking in violation of the parking restrictions.

In the event the seven (7) day Initial Parking Count determines that on average ninety-seven percent (97%) or greater of the spaces available on the Property are occupied during peak periods, or six (6) or more vehicles are parked on the Property at any one time in violation of the property's parking restrictions ("Parking Restrictions"), as defined in the Use of Towing Policy condition herein, at interim build-out or 10 (ten) or more vehicles are parked on the Property at any one time in violation of the property's Parking Restrictions at ultimate build-out, the Property Owner shall be required to implement such additional parking mitigation measures for the coming year as may be agreed upon in consultation with FCDOT. If neither condition exists, the Property Owner shall continue the execution of the parking mitigation measures in place for the Property.

- b. Annual Parking Counts and Mitigation Measures. After the completion and review of the Initial Parking Count, the Property Owner shall conduct Annual Parking Counts ("Annual Parking Counts") of the Property in accordance with the timing and methodology referenced in subparagraph 'a' above as approved by FCDOT unless otherwise amended by both FCDOT and the Property Owner to determine the number of occupied parking spaces on the Property.

In the event any of these Annual Parking Counts determine that on average 97 percent or greater of the spaces available on the Property are occupied during peak periods, or six (6) or more vehicles are parked on the Property at any one time in violation of the Parking Restrictions at interim build-out or 10 (ten) or more vehicles are parked on the Property at any one time in violation of the property's Parking Restrictions at ultimate build-out, the Property Owner shall employ other strategies for remedy measures as outlined in Section 'c' below and as determined by FCDOT in consultation with the Property Owner. If neither condition exists, the Property Owner shall continue the execution of the parking mitigation measures in place for the Property.

- c. Remedial Measures. The County may take one or more of the following actions:
  - Implementation of technological improvements to monitor and identify available spaces for non-residential uses;
  - Use of parking attendants and/or valets;

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- Establishment of an on-site parking manager during peak demand periods whose contact information, including a cell phone number or other immediate method of contact is prominently displayed in the parking facilities;
  - Provision of additional parking spaces;
  - The Board may rescind the parking reduction, or the Director may require alternative measures to satisfy parking needs, including requiring all uses to comply with the full parking requirements specified in Article 11 of the Zoning Ordinance.
- d. Termination of Annual Parking Counts. Following interim and ultimate build-out phases of the development, if the results of two (2) consecutive Annual Parking Counts show that the average parking demand on the Property during peak periods has generally stabilized below the thresholds defined above, then, subject to FCDOT approval, an Annual Parking Count is no longer necessary. This provision to terminate Annual Parking Counts does not apply to Section 'e' of these conditions which remains in effect even upon termination of annual counts.
- e. Additional Parking Counts. Notwithstanding Section 'd' above, the Fairfax County Zoning Administrator, in consultation with FCDOT, may require the Property Owner to conduct an additional parking count and/or a parking utilization study at any time. Following review of that study, in conjunction with FCDOT, or if a study is not submitted within 90 days after its request, the Board may rescind this parking reduction.
- f. The parking strategies and facilities used to achieve an average occupancy of less than ninety-seven percent (97%) of the spaces available on the Property during peak periods, and less than six (6) vehicles parked on the Property at any one time in violation of the Parking Restrictions at interim build-out or less than ten (10) vehicles parked on the Property at any one time in violation of the property's Parking Restrictions at ultimate build-out shall include, but are not limited to one or more of the following:
- i. All access points to the garages shall be gate-controlled.
  - ii. Office, resident and fitness club users shall be provided monthly access to structured parking facilities. These monthly users may be issued an electronic monitoring device, or equivalent, which will allow for easy entry and exit from the garages. The parking utilization data associated with the electronic monitoring devices shall be retained and included in the annual parking utilization analyses. Monthly users shall also be issued identification tags (i.e. a hang tag or a

- sticker) to be displayed on their vehicle for the month that it is valid. All other users, such as visitors of residential tenants and visitors to restaurants or other retailers, may be issued a time limited pass, which must be displayed on the car's dashboard.
- iii. Surface or street parking may be time limited (15 minutes, 30 minutes, 1 hour, etc.) depending on the location.
  - iv. Parking and directional signage, including signage for the reserved and time limited parking spaces, shall be placed adequately throughout the Property.
- g. Use of a towing policy. Signage shall be provided to notify users of a towing policy. Should users violate any parking restrictions, there shall be a phone number displayed for towing-related concerns. The types of parking restrictions enforceable by towing shall include, but are not limited to, a vehicle parked in excess of time limits, a vehicle parked in a marked space without the appropriate identifier (for instance, a car parked in a residential space that doesn't have a valid residential tag or sticker); a vehicle parked and/or standing in a fire lane; a double-parked vehicle; a vehicle parked in a "No Parking", "Loading Zone" or handicapped space; a vehicle parked in an accessible space without an accessible permit; and a vehicle with an expired, altered, or counterfeit permit or guest pass.
14. Parking overflow on adjacent sites shall not be permitted. The Property Owner shall not utilize offsite parking to mitigate on-site demand unless an agreement is executed by the offsite Property Owner and is approved by the County to allow offsite parking. Signage shall be installed where parking lot travel aisles transition from on-site to off-site (e.g. to the north of the Property) to enforce this provision.
15. Notwithstanding #11, the Property Owner may implement and the Director may approve future modifications to the mix of non-residential uses between shopping center retail, office and restaurant/eating establishments provided that (a) the total gross square footage of non-residential development established on the Property does not increase; and (b) a new parking generation study demonstrates to the satisfaction of the Director that the synergy among the proposed uses is comparable to the approved synergy associated with the parking reduction. The percentage of the reduction granted by the Board must not be exceeded. The minimum number of spaces required by conditions #1 and #3 shall be maintained unless otherwise approved by the Director of DPWES. Upon receipt of the modification request, the Director may also require submission of a parking utilization study, if it is determined to be needed to evaluate the existing parking conditions at the time of the request.

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16. Unless the Director has approved an extension, the approval of this parking reduction request shall expire without notice six months from the date of Board approval if Condition #9 has not been satisfied.

TIMING:

Board action is requested on January 12, 2016.

BACKGROUND:

Reston Heights is a 9.96-acre site, zoned Planned Residential Community (PRC), and located in the Reston Town Center Transit Station Area as depicted on Figure 2 of the attached study. The site is within three-quarters of a mile of the existing Wiehle-Reston East Metrorail Station and one-half of a mile from the planned Reston Town Center Metrorail Station. It is bounded by Sunrise Valley Drive, Reston Parkway, Dulles Airport Access Road, and the Reston Sheraton, as shown in Figures 1 and 4 of the attached study.

On January 28, 2008, the Board approved Planned Residential Community Application, No. PRC B-846, and on July 9, 2013, an amendment to the Development Plan, No. PRCA B-846, was approved by the Board subject to conditions dated May 21, 2013. The site is approved for development with 498 multifamily, residential, dwelling units (DUs) and 573,225 square feet of non-residential gross floor area. The PRCA plan reflects the establishment of several retail uses including restaurants, service retail, and a fitness center. The local community will be encouraged to use the fitness center, and it will serve as an on-site amenity for area office workers, residents and guests. The May 21, 2013, development conditions include among other things, a provision that permits the Property Owner to seek approval of a parking reduction request without an amendment to the PRCA plan. Pursuant to this provision, the Property Owner is seeking a parking reduction request.

The developer, JGB proposes that Reston Heights will be developed under two (2) separate build-out scenarios. The interim scenario would be constructed in the near term and is anticipated to be complete prior to the opening of the Phase 2 of the Silver Line. Each scenario is described in greater detail below:

1. Interim Build-Out. In the interim build-out phase, the plan proposes 385 multifamily units, 183,190 square feet of office uses, and 90,490 gross square feet (GSF) of retail uses serving the community. The 90,490 GSF of retail space is comprised of a 35,700-GSF fitness center, 38,790 GSF of shopping center uses and 16,000 GSF of eating establishment uses (576 table seats, 64 counter seats, and 76 employees). With these uses, interim development would require 1,605 parking spaces according to the Zoning Ordinance. It should be noted, however,

that certain spaces associated with the residential uses (one (1) reserved space per residential dwelling unit) and all of the spaces required for the fitness center are not “shared” in the shared parking study model. The 385 spaces shall be reserved exclusively for residents and 130 spaces shall be reserved exclusively for the fitness center. Therefore, a parking reduction of 22.2 % equal to 1,249 spaces (or 356 fewer parking spaces) is being requested to serve the interim built out mix of uses.

The overall interim build-out parking tabulation summary is presented on Table 1 of the attached Parking Study.

2. Ultimate Build-Out. In the ultimate build-out phase, the plan proposes 498 multi-family dwelling units, 428,225 GSF of office uses, and 129,600 GSF of retail uses serving the community. The 129,600 GSF retail space is comprised of a 35,700-GSF fitness center, 77,900 GSF of shopping center uses and 16,000 GSF of eating establishment uses (576 table seats, 64 counter seats, and 76 employees). The ultimate development would require 2,670 parking spaces according to the Zoning Ordinance. Consistent with the interim analysis, one (1) reserved space per residential dwelling unit and all of the fitness center parking spaces are not “shared” in the shared parking study model. The 498 spaces shall be reserved exclusively for residents and 130 spaces shall be reserved exclusively for the fitness center. Therefore, an ultimate build-out parking reduction of 24.2%, or 645 fewer parking spaces, for a total of 2,025 parking spaces is being requested to serve the ultimate build-out mix of uses.

The ultimate build-out parking tabulation summary is presented on Table 2 of the attached Parking Study.

The Parking Study indicates that the hourly demand for the proposed uses results in fewer spaces than actually needed based on a strict application of the Zoning Ordinance. In an October 28, 2015, memorandum, Wells + Associates predicts that the month of expected peak demand, December, results in an average surplus of 71 parking spaces during the interim phase of development (of a total of 1,255 spaces constructed) and an average surplus spaces of 122 spaces at ultimate build-out (of a total of 2,025 spaces constructed). Staff’s concern is that the number of available spaces is an estimate and can fluctuate depending on a variety of variables. Therefore, the site’s demand could exceed the available parking supply causing traffic congestion and problems onsite and off-site. Consequently, JBG has proposed parking management strategies to justify the approval of the parking reduction and to ensure the reduction is enforceable.

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The proposed conditions include the Property Owner's commitment to establish parking management strategies to reduce parking demand and optimize parking on the site in accordance with condition #13.f. Additionally, the Property Owner has committed to providing parking occupancy counts and implementing mitigation measures when the parking demand levels exceeds defined occupancy levels. Staff further recommends that the reduction be confined to the site unless an agreement is executed with the offsite owner and is approved by the County to allow offsite parking (condition #14). The percent reduction requested for Reston Heights (22.2% for the interim build-out and 24.2% for the overall build-out) also aligns with previously approved shared parking reductions for other mixed-use developments in Fairfax County.

Based on the above, staff recommends that the Board approve the proposed request subject to the conditions listed above. This recommendation reflects a coordinated review by the Department of Transportation, Department of Planning and Zoning, Office of the County Attorney, and DPWES.

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

Attachment I – Revised Parking Reduction Request and Study #6734-PKS-002-1, dated February 18, 2015 and amended through December 4, 2015 from Wells + Associates (Page 1 through 14)

STAFF:

Robert A. Stalzer, Deputy County Executive

James W. Patteson, Director, DPWES

Thomas P. Biesiadny, Director, FCDOT

William D. Hicks, Director, Land Development Services, DPWES

**WELLS + ASSOCIATES**

## MEMORANDUM

**To:** Jan Leavitt, P.E., Chief  
 Site Code Research & Development Branch  
 Department of Public Works & Environmental Services

**From:** Robin L. Antonucci  
 Kevin R. Fellin, P.E.  
 Michael J. Workosky, PTP, TOPS, TSOS  
 John F. Cavan, P.E., PTOE

**Re:** PRCA B-846; Reston Heights

**Subject:** Shared Parking Request

**Date:** December 4, 2015



1420 Spring Hill Road  
 Suite 610  
 Tysons, Virginia 22102  
 703-917-8820  
 703-917-0739 FAX  
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**INTRODUCTION**

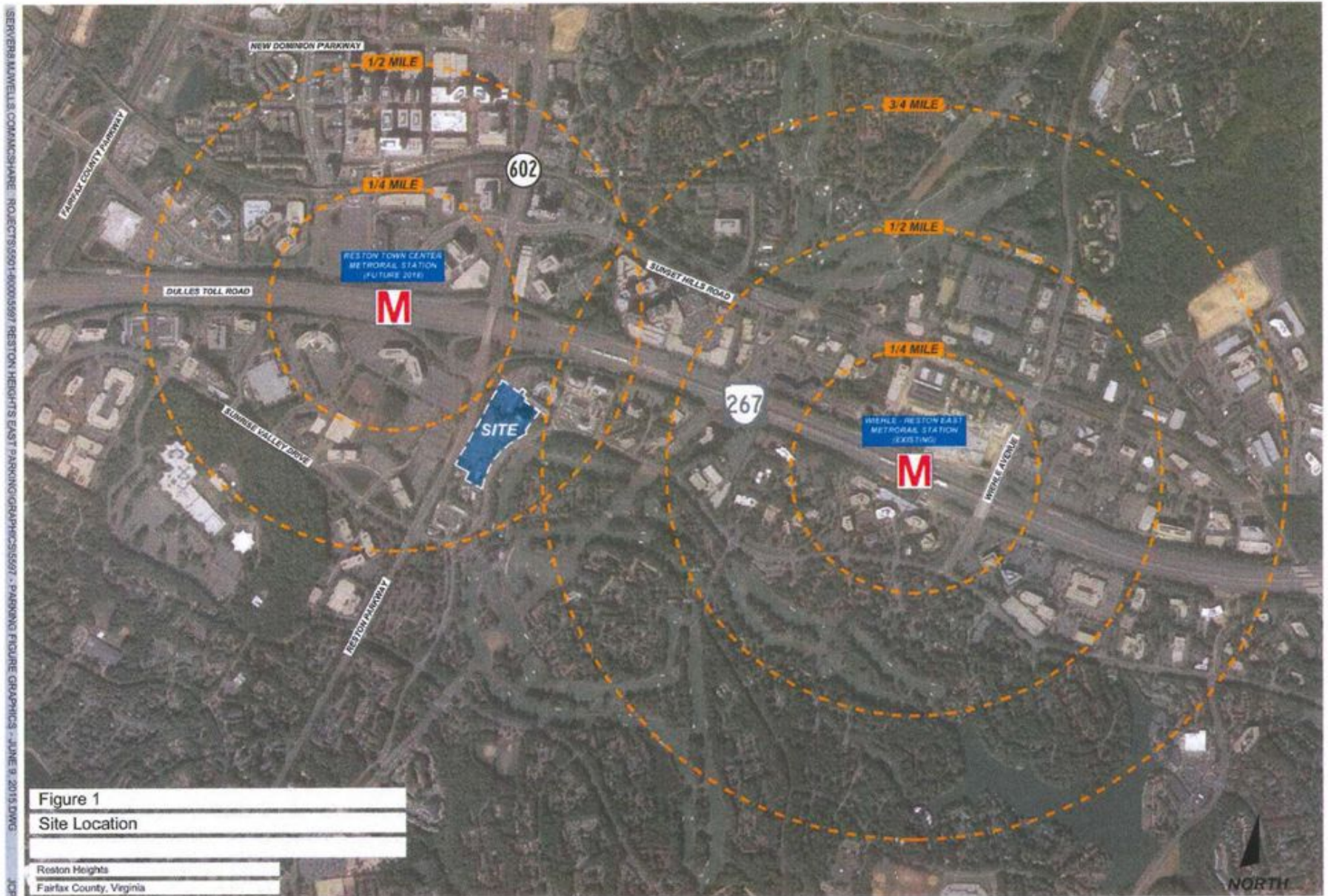
This memorandum presents the results of a revised shared parking request filed in conjunction with an approved mixed-use, transit-oriented, redevelopment (referred to as "Reston Heights") in Fairfax County, Virginia. The revisions herein are based on Fairfax County Department of Transportation (FCDOT) comments received on Tuesday, July 7, 2015 from the Department of Public Works and Environmental Services (DPWES), as well as a meeting held with DPWES staff on the same date. Responses to each of the FCDOT comments are included as **Attachment I**.

The properties that comprise Reston Heights are located in the Hunter Mill Magisterial District on the north side of Sunrise Valley Drive (Route 5320), east of Reston Parkway (Route 602), south of the Dulles Toll Road (Route 267), and in close proximity to the existing Wiehle-Reston East Metrorail station (within one mile) and the planned Reston Town Center Metrorail station (within 1/4 to 1/2 mile), as shown on Figure 1. The project area falls within Area III, Upper Potomac Planning District, Reston Town Center Transit Area, and Reston Heights District of the Fairfax County Comprehensive Plan (see Figures 2, 3, and 4).

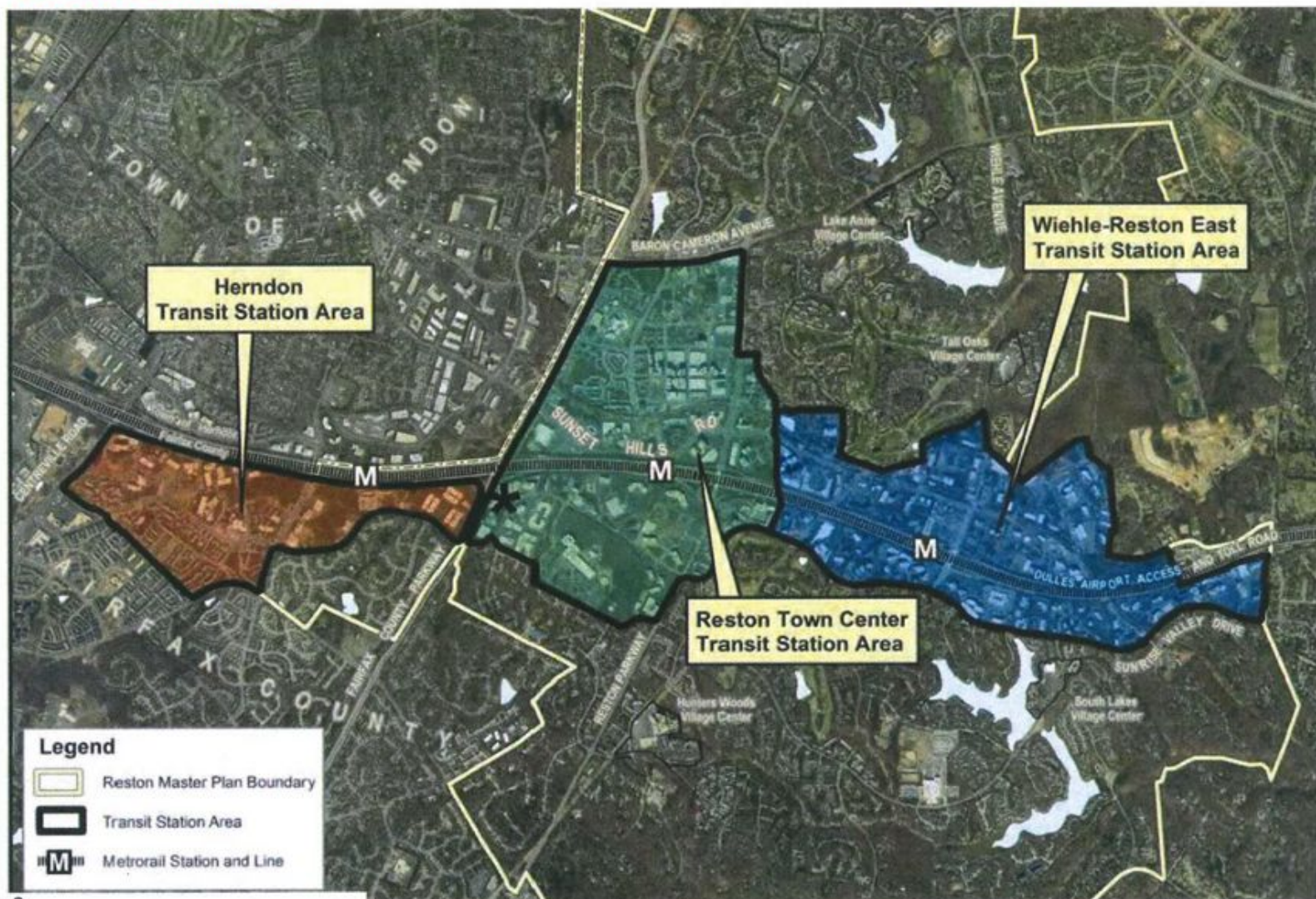
The properties are currently developed with an approximate 183,190 gross square feet (SF) of office building and approximately 17,413 SF of retail space of which all is vacant. The ±183,190 SF office building is referred to as the Reston International Center (RIC) and represents the only existing use to remain with the redevelopment as approved. To date, all of the other commercial uses on the site have been vacated.

**Transportation Consultants**  
 INNOVATION + SOLUTIONS











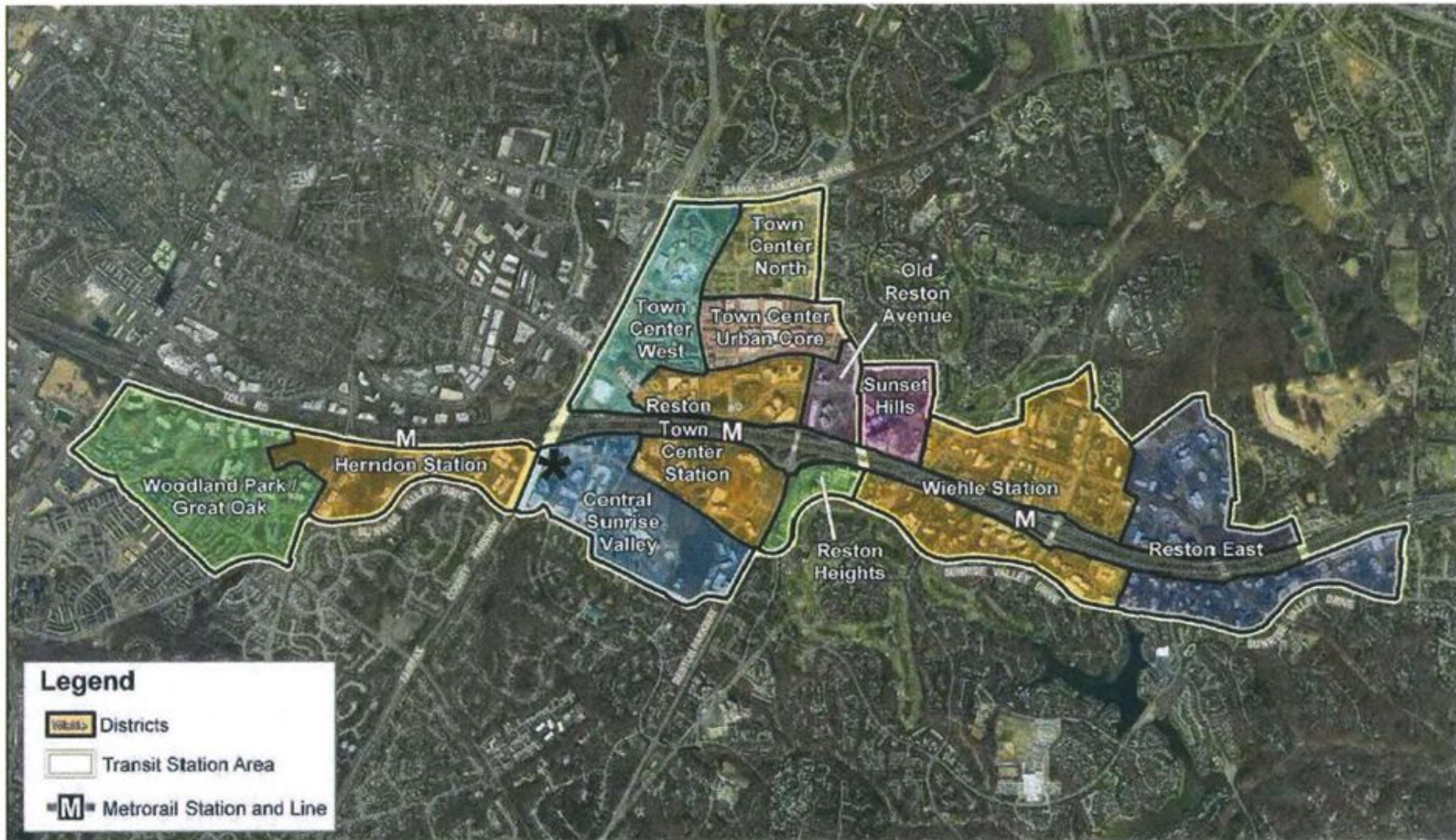


Figure 3  
Transit Station Area Districts

Reston Heights  
Fairfax County, Virginia

Obtained from:  
Fairfax County Comprehensive Plan, 2013 Edition  
Upper Potomac Planning District, Amended through 12-2-2014

\* Site Location



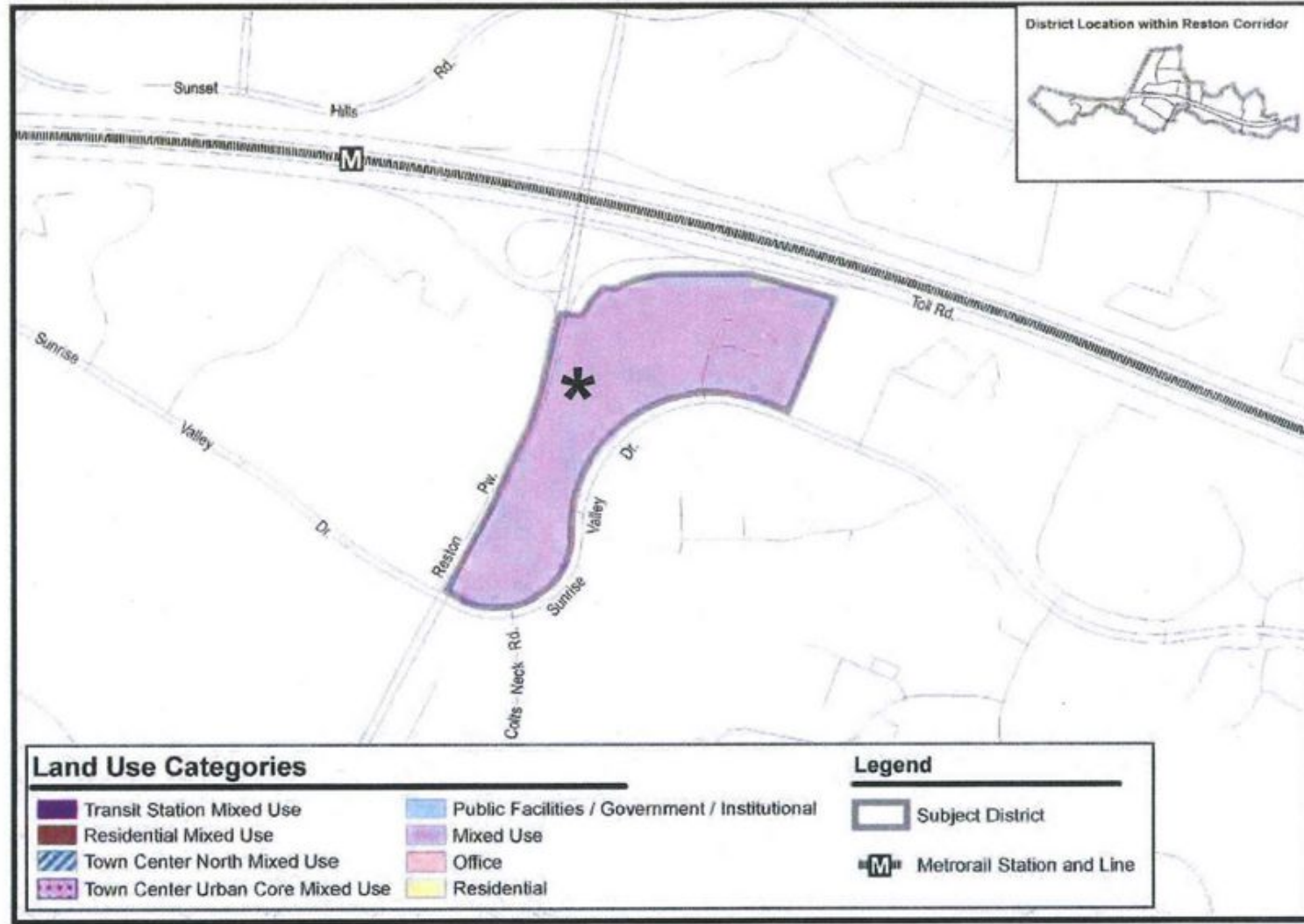


Figure 4  
Reston Heights District

Reston Heights  
Fairfax County, Virginia

Obtained from:  
Fairfax County Comprehensive Plan, 2013 Edition  
Upper Potomac Planning District, Amended through 12-2-2014

\* Site Location





## WELLS + ASSOCIATES

### MEMORANDUM



The properties that comprise Reston Heights are also identified as 2015 Tax Map Parcels 17-3 ((21)) 0001, 0002A, 0003A, 0004A, 0005A. The parcels total approximately 9.96 acres and are all zoned PRC (Planned Residential Community). The site is approved for development with 498 multifamily, residential, dwelling units (DUs), 446,751 SF of office space, and 145,000 SF of retail space as reflected on PRCA B-846. A copy of the approved PRCA Plan dated December 2010, as revised through March 15, 2013 is reproduced as Figure 5. Build out is proposed to occur over six (6) construction phases. The parking required during each phase of construction is documented in a later section of this memorandum.

The Applicant, Reston Heights Residential I LLC, proposes to redevelop the properties in both the near and long term. The near term (or interim) phase of development is anticipated to be completed prior to the opening of Phase 2 of the Silver Line. The long term (or ultimate) phase would be completed with the opening of Phase 2 of the Silver Line. Both phases include the existing RIC office building ( $\pm 183,190$  SF) to remain. For purposes of this shared parking request, both the interim and ultimate build out scenarios will be evaluated in terms of the parking required to accommodate their specific levels of development.

Sources of data for this analysis include, but are not limited to, the files and library of Wells+Associates, Inc., The JBG Companies, Urban Ltd., ReedSmith, Fairfax County, WMATA, Fairfax Connector, the Institute of Transportation Engineers (ITE), and the Urban Land Institute's (ULI) Shared Parking methodologies.





**BACKGROUND**

**Overview.** On July 9, 2013, the Board of Supervisors approved a Planned Residential Community Amendment (PRCA) B-846 subject to conditions dated May 21, 2013. This PRCA plan reflects the construction of an integrated series of buildings that would replace the existing on-site retail buildings and a portion of an existing surface parking lot. The PRCA plan reflects the establishment of several community serving retail uses including restaurants, service retail, and a fitness center that would encourage use by the local community and serve as an on-site amenity for area office workers, residents and guests.

The PRC District regulations, like the other P districts, are designed to permit a greater amount of flexibility by removing many of the restrictions of conventional zoning. This flexibility is intended to provide an opportunity and incentive to developers to achieve excellence in physical, social and economic planning.

The May 2013 development conditions include a number of design elements and transportation commitments to be completed by the Applicant, including the implementation of a Transportation Demand Management (TDM) program (Development Condition #27). The goal of the Reston Heights TDM program is to reduce the number of baseline peak hour vehicle trips by a minimum of 25% prior to the opening of the Reston Town Center Metrorail Station and 30% after the opening of the Reston Town Center Metrorail station. Further, the development conditions include a provision, which would permit the Applicant to seek approval of a shared parking request without an amendment to the PRCA plan (Development Condition #46). A copy of the May 2013 development conditions is provided as **Attachment II**.

**Site Specific Land Use.** According to the Comprehensive Plan, the greater Reston Heights District is approximately 35 acres in size and bounded by the Dulles Toll Road to the north, development along Roland Clarke Place to the east, Sunrise Valley Drive to the south, and Reston Parkway to the west. As stated in the Plan:

“Existing development includes the Reston International Center and the surrounding Reston Heights mixed-use development and the Reston Sheraton and the adjacent Reston Square mixed-use development. Other uses include a mix of retail and office uses in a low density commercial area oriented toward Sunrise Valley Drive. The Reston Heights development that includes the Reston International Center is approved for a mix of uses to include office, residential, and retail uses at an approved intensity of 2.8 FAR. The Reston Square development is approved for a mixed use development including office, residential, hotel and retail at a 1.07 FAR and has largely been built as

## WELLS + ASSOCIATES

### MEMORANDUM



approved. The district is planned for existing and approved uses and development intensities."

The PRCA plan approved by the Board for development at a FAR of 2.8 is consistent with the recommendations of the Comprehensive Plan. A copy of the Reston Heights District Plan language is provided as **Attachment III**.

**Surrounding Land Use(s)**. The properties along the site's north, east and south borders are all zoned PRC. The properties to west of Reston Parkway (Route 602) are zoned I-4 (Medium Intensity Industrial District) and developed with office uses. The neighboring parcels to the north are exclusively commercial uses that are separated from the subject site by the Dulles Toll Road. The properties to the east are developed with mix of hotel, commercial, and multi-family residential uses. The property along the south side of Sunrise Valley Drive (Route 5320) is the Reston Golf Course and immediately adjacent to the subject site to the south is the Reston Business Center. Figure 6 depicts the existing zoning designations associated with the surrounding parcels.

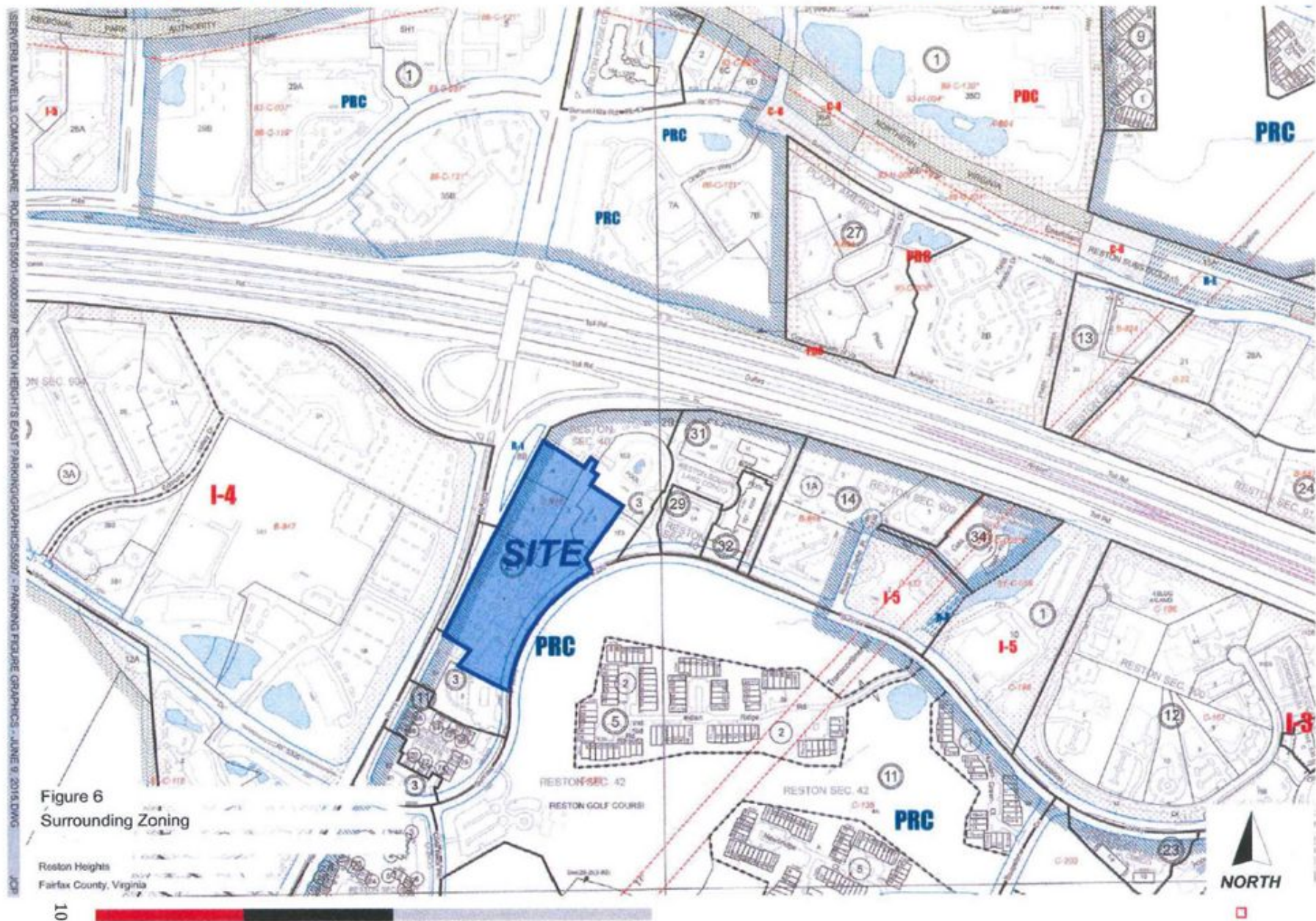
### STUDY METHODOLOGY

**Project Overview**. The Applicant proposes to raze the existing retail buildings on the subject site, retain the RIC and redevelop the remainder of the property with a mix of residential, office and/or retail uses. As stated above, the proposed PRCA plan meets the goals and objectives of the County's Comprehensive Plan for the Reston Heights District. As reflected on the PRCA plan (see Figure 5), new vertically integrated buildings providing a mix of new office/retail space and residential apartments will be developed in concert with the RIC. A full size copy of the PRC/PCA plan is provided as **Attachment IV**.

In order to facilitate the redevelopment of the Reston Heights property, the Applicant is seeking the approval of a shared parking request. JBG proposes that Reston Heights will be developed under two (2) separate build out scenarios. As stated above, an interim build out would be constructed in the near term and an ultimate build out in the long term. Each scenario (interim and ultimate) is described in greater detail below:

**Interim Build Out**. In the near term, the build out of Reston Heights will include the following mix of uses:









- ±183,190 SF of office uses (existing)
- ±385 DUs of multifamily residential uses (new)
- ±90,490 SF shopping center comprised of:
  - ±35,700 SF fitness center (new)
  - ±38,790 SF of shopping center retail (new)
  - ±16,000 SF of eating establishments (new)
    - ±576 table seats
    - ±64 counter seats
    - ±76 employees

The parking reduction request for both the interim and ultimate build out is based on the concept of shared parking. Shared parking, according to the Urban Land Institute (ULI) is defined as one parking space used "to serve two or more individual land uses without conflict or encroachment". The sharing of parking spaces is a phenomenon that has been occurring for decades in urban and suburban communities. Parking demand for different land uses have unique temporal distributions, allowing the same parking space to be occupied by the peak demand of different land uses throughout the day. Both the interim and ultimate analyses will evaluate the parking demand associated with all of the commercial and residential uses (existing and planned). It should be noted however, that certain spaces associated with the residential uses [one (1) reserved space per residential DU] and the all of those spaces required for the fitness center will be excluded from "sharing" in the shared parking model. Therefore, a **parking reduction of 22.2 %** equal to 1,249 spaces **(or 356 fewer parking spaces** than required by a strict application of the Zoning Ordinance) is requested to serve the interim build out mix of uses where:

- 721 spaces are shared parking spaces [non-residential excluding the fitness center, resident (portion of), and residential visitor spaces]
- 385 spaces are reserved for residents (1 space per DU)
- 143 spaces are for the fitness center (only 130 spaces of its 143 space requirement will be reserved for the fitness center's exclusive use)

Under the interim build out condition, the code parking for the fitness center is based on the shopping center rate at 4.0 spaces per 1,000 SF.

For purposes of this analysis, the fitness center, a component of the retail uses, is parked at the shopping center rate. Please note, the 13 spaces not reserved for the fitness center (143 spaces – 130 reserved spaces = 13 spaces) will be available for all the other uses to use. **None of the spaces required to meet the County's minimum parking requirements for the fitness center were considered "shared" spaces in shared parking analysis.** The overall interim build out parking tabulation summary is presented on Table 1.

Table 1 - Revised  
Reston Heights  
Interim Build Out Parking Tabulation Summary (1) (2) (3)

Build Out Scenario	Building-Land Unit	Use	Amount	Unit	Required (3) and Provided Parking		Spaces	Excess/Deficit Spaces
Interim Build Out (Development Phase IV)	A	Shopping Center Retail	13,200	GFA (1)	4.0	per 1,000 GSF (shared)	52.8	
	A	Eating Establishment	8,000	GFA				
			288	Table Seats	0.25	per Table Seat (shared)	72.0	
			32	Counter Seats	0.5	per Bar Seat (shared)	16.0	
			38	Employees	0.5	per Employee (shared)	19.0	
	A	Residential	385	DU (2)	0.15	per DU (visitor shared)	57.8	
					0.45	per DU (resident shared)	173.3	
					1.0	per DU (resident not shared)	385.0	
	A	Fitness Center	35,700	GFA	4.0	per 1,000 GSF (not shared)	142.8	
	C	Shopping Center Retail	11,490	GFA	4.0	per 1,000 GSF (shared)	46.0	
	C	Eating Establishment	8,000	GFA				
			288	Table Seats	0.25	per Table Seat (shared)	72.0	
			32	Counter Seats	0.5	per Bar Seat (shared)	16.0	
			38	Employees	0.5	per Employee (shared)	19.0	
	E (Existing RIC)	Office	183,190	GFA	2.6	per 1,000 GSF (shared)	476.3	
	E	Shopping Center Retail	14,100	GFA	4.0	per 1,000 GSF (shared)	56.4	
					<b>Total Code Requirement</b>		<b>1,605</b>	
					<b>Total Code "Not Shared"</b>		<b>527.8</b>	
					<b>Total Code "Shared"</b>		<b>1,076.5</b>	
					<b>Total Code Requirement</b>		<b>1,605</b>	
					<b>Shared Parking Red.</b>		<b>(356)</b>	
					<b>Total Proposed Requirement</b>		<b>1,249</b>	
					<b>Requested % Reduction from Code</b>		<b>22.2%</b>	
					<b>ULI Model Shared Spaces</b>		<b>721</b>	
					<b>Fitness Center Unreserved Spaces</b>		<b>13</b>	
					<b>Total Spaces Available for Sharing</b>		<b>734</b>	
					<b>Reserved Resident Spaces</b>		<b>365</b>	
					<b>Fitness Center Reserved Spaces</b>		<b>130</b>	
					<b>Total Spaces Required</b>		<b>1,249</b>	
					<b>Building A Garage</b>		<b>55</b>	
					<b>Building B Garage</b>		<b>361</b>	
					<b>Building D Garage</b>		<b>393</b>	
					<b>Surface/On-Street Spaces</b>		<b>146</b>	
					<b>Provided</b>		<b>1,255</b>	
					<b>Total Required</b>		<b>1,249</b>	
					<b>Total Provided</b>		<b>1,255</b>	<b>6</b>

Note(s):

(1) GFA = Square Feet of Gross Floor Area

(2) DU = Residential Dwelling Unit

(3) Code parking ratios based on strict application of Article 11 of the Fairfax County Zoning Ordinance.





**Ultimate Build Out.** The ultimate build out (inclusive of the interim build out uses) will include the following mix of uses with redevelopment of the site:

- ±183,190 SF of office uses (existing)
- ±498 DUs of multifamily residential uses (new)
- ±245,035 SF of office uses (new)
- ±129,600 SF shopping center comprised of:
  - ±35,700 SF fitness center (new)
  - ±77,900 SF of shopping center retail (new)
  - ±16,000 SF of eating establishments (new)
    - ±576 table seats
    - ±64 counter seats
    - ±76 employees

The parking reduction request for the ultimate build out is also based on the concept of shared parking. Consistent with the interim analysis, one (1) reserved space per residential DU and the all of the fitness center parking spaces are excluded from "sharing" in the shared parking model. Therefore, with the ultimate build out a **parking reduction of 24.2% (or 645 fewer parking spaces)** than required by a strict application of the Zoning Ordinance) for a total of 2,025 parking spaces is requested to serve the ultimate build out mix of uses where:

- 1,355 spaces are shared parking spaces [non-residential excluding the fitness center, resident (portion of), and residential visitor spaces]
- 498 spaces are reserved for residents (1 space per DU)
- 172 spaces are for the fitness center (only 130 spaces of its 172 space requirement will be reserved for the fitness center's exclusive use)

Under the ultimate build out condition, the code parking for the fitness center is based on the shopping center rate at 4.8 spaces per 1,000 SF.

Similar to the interim build out where the parking rate for shopping center is 4 spaces per 1,000 GFA, at 4.8 spaces per 1,000 GFA for shopping center under the ultimate build out, the 42 spaces not reserved for the fitness center (172 spaces – 130 reserved spaces = 42 spaces) will be available for all the other uses to use. **None of the spaces required to meet the County's minimum parking requirements for the fitness center were considered "shared" spaces in shared parking analysis.** The overall ultimate build out parking tabulation summary is presented on Table 2.



Table 2 - Revised  
Reston Heights  
Ultimate Build Out Parking Tabulation Summary (1) (2) (3)

Build Out Scenario	Building-Land Unit	Use	Amount	Unit	Required (3) and Provided Parking		Spaces	Excess/Deficit Spaces
Ultimate Build Out (Development Phase IV)	A	Shopping Center Retail	13,200	GFA	4.8	per 1,000 GSF (shared)	63.4	
	A	Eating Establishment	8,000	GFA				
			288	Table Seats	0.25	per Table Seat (shared)	72.0	
			32	Counter Seats	0.5	per Bar Seat (shared)	16.0	
			38	Employees	0.5	per Employee (shared)	19.0	
	A	Residential	385	DU	0.15	per DU (visitor shared)	57.8	
					0.45	per DU (resident shared)	173.3	
					1.0	per DU (resident not shared)	385.0	
	A	Fitness Center	35,700	GFA	4.8	per 1,000 GSF (not shared)	171.4	
	C	Shopping Center Retail	50,600	GFA	4.8	per 1,000 GSF (shared)	242.9	
	C	Eating Establishment	8,000	GFA				
			288	Table Seats	0.25	per Table Seat (shared)	72.0	
			32	Counter Seats	0.5	per Bar Seat (shared)	16.0	
			38	Employees	0.5	per Employee (shared)	19.0	
	C	Residential	113	DU	0.15	per DU (visitor shared)	17.0	
					0.45	per DU (resident shared)	50.9	
					1.0	per DU (resident not shared)	113.0	
	E (Existing RIC)	Office	183,190	GFA	2.6	per 1,000 GSF (shared)	476.3	
	E	Office	245,035	GFA	2.6	per 1,000 GSF (shared)	637.1	
	E	Shopping Center Retail	14,100	GFA	4.8	per 1,000 GSF (shared)	67.7	
					<b>Total Code Requirement</b>		<b>2,670</b>	
					<b>Total Code "Not Shared"</b>		<b>669.4</b>	
					<b>Total Code "Shared"</b>		<b>2,000.1</b>	
					<b>Total Code Requirement</b>		<b>2,670</b>	
					<b>Shared Parking Red.</b>		<b>(645.0)</b>	
					<b>Total Proposed Requirement</b>		<b>2,025</b>	
					<b>Requested % Reduction from Code</b>		<b>24.2%</b>	
					<i>ULI Model Shared Spaces</i>		<i>1,355</i>	
					<i>Fitness Center Unreserved Spaces</i>		<i>42</i>	
					<i>Total Spaces Available for Sharing</i>		<i>1,397</i>	
					<i>Reserved Resident Spaces</i>		<i>498</i>	
					<i>Fitness Center Reserved Spaces</i>		<i>130</i>	
					<b>Total Spaces Required</b>		<b>2,025</b>	
					Building A Garage		55	
					Building B Garage		661	
					Building C Garage		862	
					Building D Garage		393	
					Surface/On-Street Spaces		54	
					<b>Provided</b>		<b>2,025</b>	
					<b>Total Required</b>		<b>2,025</b>	
					<b>Total Provided</b>		<b>2,025</b>	<b>0</b>

Note(s):

(1) GFA = Square Feet of Gross Floor Area

(2) DU = Residential Dwelling Unit

(3) Code parking ratios based on strict application of Article 11 of the Fairfax County Zoning Ordinance.



ACTION - 4

Approval of the Project Agreement Between the Virginia Department of Rail and Public Transportation (DRPT) and Fairfax County for Funding the Route 1 Bus Rapid Transit Design (Lee and Mount Vernon Districts)

ISSUE:

Approval for the Director of the Department of Transportation to sign a Project Agreement with DRPT (Project) to enable the County to receive Route 1 Bus Rapid Transit (BRT) design funds in FY 2016.

RECOMMENDATION:

The County Executive recommends that the Board authorize the Director of the Department of Transportation to sign the Agreement (Attachment 1) between DRPT and Fairfax County, in substantial form, to fund the Project.

TIMING:

The Board of Supervisors should act on this item on January 12, 2016, so that DRPT can release FY 2016 transit funding for the Project.

BACKGROUND:

In 2013 and 2014, DRPT conducted a Multimodal Alternatives Analysis for an approximately 16-mile segment of Route 1 from I-495/Huntington Metrorail Station to Woodbridge in coordination with Fairfax County, Prince William County, the Virginia Department of Transportation (VDOT) and the Office of Intermodal Planning and Investment (OIPI). In October 2014, the study's Executive Steering Committee adopted a resolution (Attachment 2) in support of the study's final recommendations. The final report was completed in January 2015.

Through stakeholder participation and technical analysis, the study recommended a program of transportation improvements for adoption by Fairfax County and Prince William County. Solutions included combinations of transit, roadway, pedestrian, and bicycle improvements. The study ultimately recommended a BRT system be constructed in three phases in the short term, and a three-mile extension of the Metrorail Yellow Line to Hybla Valley in the future. The first two phases of the BRT between Huntington and Fort Belvoir are being implemented by Fairfax County.

Board Agenda Item  
January 12, 2016

FISCAL IMPACT:

Funding for this study was previously approved by the Board and is provided on a reimbursement basis. DRPT is providing \$3,840,000 for the study and design of BRT on Route 1 and the County will provide a \$160,000 Local Cash Match for a total of \$4,000,000. Funding is appropriated in Project 2G40-114-000, Route 1 Bus Rapid Transit (BRT) – NVTA 30%, in Fund 40010, County and Regional Transportation Projects. There is no impact to the General Fund.

CREATION OF NEW POSITIONS:

No new positions will be created by this grant.

ENCLOSED DOCUMENTS:

Attachment 1 – Project Grant # 50011-01: Route 1 Bus Rapid Transit Study and Design  
Attachment 2 – Resolution for Support of the Recommendation of the Route 1 Multimodal Alternative Analysis, October 27, 2014  
Attachment 3 - Fairfax County Board of Supervisors Agreement Execution Resolution for the Route 1 Bus Rapid Transit Study and Design Project Agreement

STAFF:

Robert A. Stalzer, Deputy County Executive  
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)  
Todd Wigglesworth, Chief, Coordination and Funding Division, FCDOT  
Malcolm Watson, Coordination and Funding Division, FCDOT

**Project Agreement for the Use of  
Commonwealth Transportation Funds  
Fiscal Year 2016  
Six Year Improvement Program Approved Project  
Grant Number 50011-01**

This Project Agreement ("Agreement"), effective July 1, 2015, by and between the Commonwealth of Virginia Department of Rail and Public Transportation ("Department") and Fairfax County ("Grantee") (collectively, the "Parties"), is for the provision of funding for the Route 1 Bus Rapid Transit study and design ("Project").

WHEREAS, the Department has approved funding for the Project; and

WHEREAS, on June 17, 2015, the Commonwealth Transportation Board ("CTB") allocated funding for the Project; and

WHEREAS, the Parties wish to define the extent of the Project, the responsibilities of each Party, the manner of performing the necessary Work, the method and time of payment, and to set out additional conditions associated with the Project.

NOW, THEREFORE, in consideration of the covenants and agreements set forth, and other good and valuable consideration, the sufficiency of which is acknowledged, the Parties agree as follows:

**ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET**

1. The Work under the terms of this Agreement is as follows:
  - a. Route 1 Bus Rapid Transit study and design.
2. The Department agrees to provide funding as detailed below:
  - a. State grant funding in the amount of \$3,840,000 for the Project approved in the Fiscal Year 2016 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, attached and made a part of this Agreement.
3. The Grantee hereby acknowledges that state grant funding for this grant cannot exceed the amount allocated by the CTB and that state grant funding is contingent upon appropriation by the General Assembly of Virginia.

**ARTICLE 2. INCORPORATION OF MASTER AGREEMENT  
FOR USE OF COMMONWEALTH FUNDS**

The Parties hereby agree to incorporate the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012, as if set out in full herein.

IN TESTIMONY THEREOF, the Department and the Grantee have caused this Agreement to be executed, each by their duly authorized officers, all as of the day, month, and year first written.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: \_\_\_\_\_  
Director

Date Signed: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_



## **Appendix 1**

**Grantee: Fairfax County**

**Project: Route 1 Bus Rapid Transit Study and Design**

**State Project Agreement**

**UPC T15061**

**Project Number: 50011-01**

**Project Start Date: July 1, 2015**

**Project Expiration Date: December 31, 2016**

<b>Fund Code</b>		<b>Item Amount</b>
472	Grant Amount (State share of Project cost – 96%)	\$3,840,000
1400	Local expense (share of Project cost – 4%)	\$ 160,000
	Total Project Expense	\$4,000,000

In no event shall this grant exceed \$3,840,000.

Resolution for Support of the Recommendations  
of the Route 1 Multimodal Alternatives Analysis  
October 27, 2014

ENDORSEMENT OF THE RECOMMENDATIONS OF THE ROUTE 1 MULTIMODAL ALTERNATIVES ANALYSIS

WHEREAS, the Executive Steering Committee for the Route 1 Multimodal Alternatives Analysis has coordinated with the project team in developing transportation recommendations for a 15-mile corridor in Fairfax and Prince William Counties; and

WHEREAS, the Virginia Department of Rail and Public Transportation—in partnership with Fairfax County, Prince William County, the Virginia Department of Transportation, and the Office of Intermodal Planning and Investment—has incorporated recent legislative history and relevant studies in completing the Route 1 Multimodal Alternatives Analysis, which involved intensive technical analyses and frequent coordination with agency and community stakeholders, leading to the recommendations; and

WHEREAS, the Executive Steering Committee supports the project recommendations for a phased implementation of the multimodal (roadway, bicycle/pedestrian, and transit) improvements of “Alternative 4 BRT/Metrorail Hybrid”, including:

- **Roadway Widening:** Widen roadway from four lanes to six lanes where necessary to create a consistent, six-lane cross section along the corridor;
- **Bicycle and Pedestrian Facilities:** Create a continuous facility for pedestrians and bicyclists along the 15 mile corridor; the configuration will vary depending upon urban design, right-of-way availability, and other local considerations;
- **Transit:** Contingent upon increased land use density and project funding, implement a median-running Bus Rapid Transit (BRT) system from Huntington to Route 123 in Woodbridge (curb-running BRT in mixed traffic within the Prince William County portion) and a 3-mile Metrorail Yellow Line extension from Huntington to Hybla Valley as expeditiously as possible; and


WHEREAS, the Executive Steering Committee supports incorporating the recommendations in local, regional, and statewide plans so that the projects will be positioned for funding; and


WHEREAS, supportive land uses, including increased development density and mixed-use, pedestrian-oriented development or redevelopment, along with supporting infrastructure, may be incorporated in local plans and regional forecasts in conjunction with the transit improvement; and


NOW, THEREFORE, BE IT RESOLVED, that the Executive Steering Committee of the Route 1 Multimodal Alternatives Analysis hereby endorses the transportation recommendations for implementation of the multimodal (roadway, bicycle/pedestrian, and transit) improvements of “Alternative 4 BRT/Metrorail Hybrid,” contingent upon supportive land use and an achievable funding plan.


Resolution for Support of the Recommendations  
of the Route 1 Multimodal Alternatives Analysis  
October 27, 2014

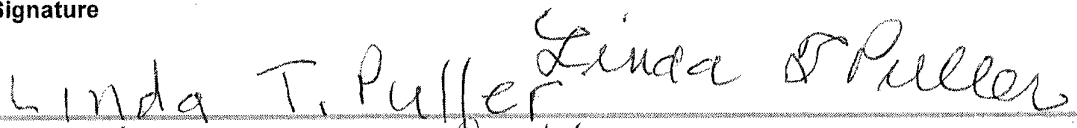
Endorsed By the Following Executive Steering Committee Members on October 27, 2014:

Signature	
Print Name	John D. JENKINS
Representing	Prince William County, VA, Nebraska District

Signature	
Print Name	Scott A. Smore //
Representing	44th House of Delegates District

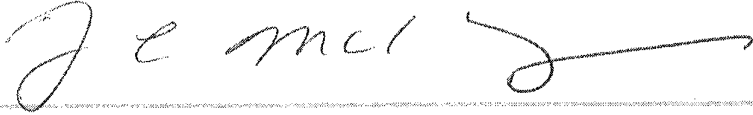
Signature	
Print Name	MARK D SICKLES
Representing	HOUSE DIST 43

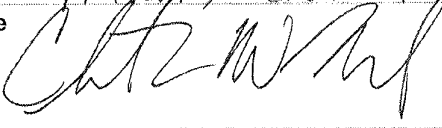
Signature	
Print Name	GERALD W. "GERRY" HYLAND
Representing	MOUNT VERNON SUPERVISOR


Signature	
Print Name	Linda T. Puller
Representing	Senate


Resolution for Support of the Recommendations  
of the Route 1 Multimodal Alternatives Analysis  
October 27, 2014

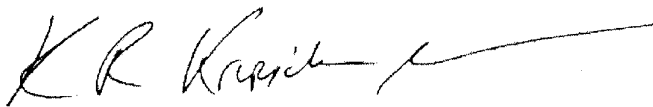
Endorsed By the Following Executive Steering Committee Members on October 27, 2014:

Signature	
Print Name	JERREY C. MCKAY
Representing	LEE DISTRICT SUPERVISOR FAIRFAX COUNTY BOARD OF SUPERVISORS

Signature	
Print Name	CHRISTOPHER W. LANGRAF
Representing	FORT BELVOIR

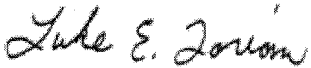
Signature	
Print Name	Renée N. Hamilton
Representing	VDOT


Signature	
Print Name	David D. Alb
Representing	House of Delegates 42 <sup>nd</sup> District

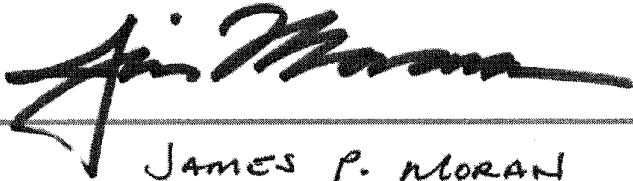
Signature	
Print Name	K. Rob Krupicka, JR
Representing	45 <sup>th</sup> District House of Delegates


Resolution for Support of the Recommendations  
of the Route 1 Multimodal Alternatives Analysis  
October 27, 2014


Endorsed By the Following Executive Steering Committee Members on October 27, 2014:

Signature	
Print Name	Luke E Torian
Representing	52nd District, House of Delegates

Signature	
Print Name	Adam Ebbin
Representing	30th District (Alexandria, Arlington, and Fairfax), Senate of Virginia

Signature	
Print Name	JAMES P. MORAN
Representing	U.S. House of Representatives, 8th District of VA

Signature	
Print Name	GERALD E. CONNOLLY
Representing	11th District of VA, U.S. Congress

Signature	
Print Name	Catherine Hudgins
Representing	WMATA Board of Directors and Fairfax County Supervisor, Hunter Mill District

## **Fairfax County Board of Supervisors Resolution**

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center of Fairfax, Virginia, on Tuesday, January 12, 2016, at which meeting a quorum was present and voting, the following resolution was adopted.

### **AGREEMENT EXECUTION RESOLUTION**

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Fairfax County, Virginia, authorizes the Director of the Department of Transportation to execute, on behalf of the County of Fairfax, a Project Agreement with the Virginia Department of Rail and Public Transportation (DRPT) for the provision of funding for the Route 1 Bus Rapid Transit design.

Adopted this 12<sup>th</sup> day of January 2016, Fairfax, Virginia

ATTEST \_\_\_\_\_  
Catherine A. Chianese  
Clerk to the Board of Supervisors

Board Agenda Item  
January 12, 2016

ACTION - 5

Approval of Standard Project Agreement with the Virginia Department of Transportation for the Springfield CBC Commuter Parking Garage Project (Lee District)

ISSUE:

Board of Supervisors' authorization for the Fairfax County Director of the Department of Transportation to sign standard project agreement for \$8,610,000 with the Virginia Department of Transportation (VDOT), substantially in the form of Attachment 2, to implement the Springfield CBC Commuter Parking Garage project.

RECOMMENDATION:

The County Executive recommends that the Board approve a resolution (Attachment 1) authorizing the Fairfax County Director of the Department of Transportation to execute a standard project agreement, in substantial form, with VDOT (Attachment 2) to implement the Springfield CBC Commuter Parking Garage project.

TIMING:

The Board of Supervisors should act on this item on January 12, 2016, so that VDOT can begin to incur costs for Preliminary Engineering activities and so that funding is in place for when the right-of-way phase is initiated.

BACKGROUND:

The Springfield CBC Commuter Parking Garage will serve a critical role in reducing traffic congestion in Northern Virginia. The facility will operate as a transit transfer location allowing users to transfer from single-occupancy vehicles to more environmentally friendly modes of transportation, including carpooling and commuter bus service. The five-story project will create approximately 1,000 commuter parking spaces and provide up to seven bus bays for Fairfax Connector buses. It also will include a dedicated area for passengers utilizing the extensive informal car pool system. The facility includes pedestrian and bicycle access, bicycle storage, passenger waiting areas, and transit system information. The proposed project would be located on one parcel of property that is owned by the county and currently used for a surface commuter parking lot. The project includes a pedestrian bridge over Old Keene Mill Road.

Board Agenda Item  
January 12, 2016

The development of the Springfield CBC Commuter Parking Garage project was first described in the *Springfield Connectivity Study* (2006). More recently the project was recommended in the *Fairfax County Comprehensive Plan, 2013 Edition, Area IV – Franconia-Springfield Area and Fort Belvoir North Area* (as amended through 10-20-2015, pg. 28). This facility will build upon and enhance a variety of transit investments that have been made in the Greater Springfield area over the past two decades.

The Springfield CBC Commuter Parking Garage project is currently in the conceptual design phase. The County is working with stakeholders in the Springfield area to finalize design concepts. This agreement will support Preliminary Engineering activities and Right-of-Way costs associated with the project.

FISCAL IMPACT:

The County is committing \$5,200,000 in Board approved revenues from Fund 40010 (County and Regional Transportation Projects), and Federal Transit Administration funds from Federal Transit Administration grant VA-04-0032 to support the implementation of the Springfield CBC Commuter Parking Garage. \$3,410,000 in Board approved federal Congestion Mitigation Air Quality (CMAQ) funds are also committed to the project. There is no impact to the General Fund.

ENCLOSED DOCUMENTS:

Attachment 1: Resolution to Execute Agreements with the Virginia Department of Transportation

Attachment 2: Standard Project Agreement for the Springfield CBC Commuter Parking Project, including Related Appendices, with the Virginia Department of Transportation

STAFF:

Robert A. Stalzer, Deputy County Executive

Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)

Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT

Karyn Moreland, Section Chief, Capital Projects and Traffic Engineering Division, FCDOT

Michael Guarino, Engineer IV, Capital Projects and Traffic Engineering Division, FCDOT

Todd Wigglesworth, Chief, Coordination and Funding Division, FCDOT

Jim McGettrick, Senior Assistant County Attorney



## **Fairfax County Board of Supervisors Resolution**

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center of Fairfax, Virginia, on Tuesday, January 12, 2016, at which meeting a quorum was present and voting, the following resolution was adopted.

### **AGREEMENT EXECUTION RESOLUTION**

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Fairfax County, Virginia, authorizes the Director of Fairfax County's Department of Transportation to execute, on behalf of the County of Fairfax, a Standard Project Agreement with the Virginia Department of Transportation (VDOT) for the implementation of the Springfield CBC Commuter Parking Garage project to be administered by VDOT.

Adopted this 12<sup>th</sup> day of January 2016, Fairfax, Virginia

ATTEST \_\_\_\_\_  
Catherine A. Chianese  
Clerk to the Board of Supervisors

**STANDARD PROJECT ADMINISTRATION AGREEMENT**  
**Federal-aid Projects**

Project Number	UPC	Local Government
0644-029-175	106274	Fairfax County

THIS AGREEMENT, made and executed in triplicate this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the County of Fairfax, Virginia, hereinafter referred to as the LOCALITY and the Commonwealth of Virginia, Department of Transportation, hereinafter referred to as the DEPARTMENT.

WHEREAS, the LOCALITY has expressed its desire to administer the work described in Appendix A, and such work for each improvement shown is hereinafter referred to as the Project; and

WHEREAS, the funds shown in Appendix A have been allocated to finance each Project; and

WHEREAS, the LOCALITY is committed to the development and delivery of each Project described in Appendix A in an expeditious manner; and;

WHEREAS, both parties have concurred in the LOCALITY's administration of the phase(s) of work for the respective Project(s) listed in Appendix A in accordance with applicable federal, state, and local law and regulations.

NOW THEREFORE, in consideration of the mutual premises contained herein, the parties hereto agree as follows:

1. The LOCALITY shall:
  - a. Be responsible for all activities necessary to complete the noted phase(s) of each Project shown in Appendix A, except for activities, decisions, and approvals which are the responsibility of the DEPARTMENT, as required by federal or state laws and regulations or as otherwise agreed to, in writing, between the parties. Each Project will be designed and constructed to meet or exceed current American Association of State Highway and Transportation Officials standards or supplementary standards approved by the DEPARTMENT
  - b. Meet all funding obligation and expenditure timeline requirements in accordance with all applicable federal and state laws and regulations, and Commonwealth Transportation Board and DEPARTMENT policies and as identified in Appendix A to this Agreement. Noncompliance with this requirement can result in deallocation of the funding, rescinding of state funding match, termination of this Agreement, or DEPARTMENT denial of future requests to administer projects by the LOCALITY.

- c. Receive prior written authorization from the DEPARTMENT to proceed with preliminary engineering, right-of-way acquisition and utility relocation, and construction phases of each Project.
- d. Administer the project(s) in accordance with guidelines applicable to Locally Administered Projects as published by the DEPARTMENT.
- e. Maintain accurate and complete records of each Project's development and documentation of all expenditures and make such information available for inspection or auditing by the DEPARTMENT. Records and documentation for items for which reimbursement will be requested shall be maintained for no less than three (3) years following acceptance of the final voucher on each Project.
- f. No more frequently than monthly, submit invoices with supporting documentation to the DEPARTMENT in the form prescribed by the DEPARTMENT. The supporting documentation shall include copies of related vendor invoices paid by the LOCALITY and an up-to-date project summary and schedule tracking payment requests and adjustments. A request for reimbursement shall be made within 90 days after any eligible project expenses are incurred by the Locality. For federally funded projects and pursuant to 2 CFR 200.338, Remedies for Noncompliance, violations of the provision may result in the imposition of sanctions including but not limited to possible denial or delay of payment of all or a part of the costs associated with the activity or action not in compliance.
- g. Reimburse the DEPARTMENT all Project expenses incurred by the DEPARTMENT if, due to action or inaction solely by the LOCALITY, federally funded Project expenditures incurred are not reimbursed by the Federal Highway Administration (FHWA), or reimbursements are required to be returned to the FHWA, or in the event the reimbursement provisions of Section 33.2-348 or Section 33.2-331 of the Code of Virginia, 1950, as amended, or other applicable provisions of federal, state, or local law or regulations require such reimbursement.
- h. On Projects that the LOCALITY is providing the required match to state or federal funds, pay the DEPARTMENT the LOCALITY's match for eligible Project expenses incurred by the DEPARTMENT in the performance of activities set forth in paragraph 2.a.
- i. Administer the Project in accordance with all applicable federal, state, or local laws and regulations. Failure to fulfill legal obligations associated with the project may result in forfeiture of federal or state-aid reimbursements
- j. Provide certification by a LOCALITY official that all LOCALITY administered Project activities have been performed in accordance with all federal, state, and local laws and regulations. If the locality expends over

\$750,000 annually in federal funding, such certification shall include a copy of the LOCALITY's single program audit in accordance with 2 CFR 200.501, Audit Requirements.

- k. If legal services other than that provided by staff counsel are required in connection with condemnation proceedings associated with the acquisition of Right-of-Way, the LOCALITY will consult the DEPARTMENT to obtain an attorney from the list of outside counsel approved by the Office of the Attorney General. Costs associated with outside counsel services shall be reimbursable expenses of the project.
  - l. For Projects on facilities not maintained by the DEPARTMENT, provide, or have others provide, maintenance of the Project upon completion, unless otherwise agreed to by the DEPARTMENT.
  - m. Ensure compliance with the provisions of Title VI of the Civil Rights Act of 1964, regulations of the United States Department of Transportation (USDOT), Presidential Executive Orders and the Code of Virginia relative to nondiscrimination.
2. The DEPARTMENT shall:
- a. Perform any actions and provide any decisions and approvals which are the responsibility of the DEPARTMENT, as required by federal and state laws and regulations or as otherwise agreed to, in writing, between the parties and provide necessary coordination with the FHWA as determined to be necessary by the DEPARTMENT.
  - b. Upon receipt of the LOCALITY's invoices pursuant to paragraph 1.f., reimburse the LOCALITY the cost of eligible Project expenses, as described in Appendix A. Such reimbursements shall be payable by the DEPARTMENT within 30 days of an acceptable submission by the LOCALITY.
  - c. If appropriate, submit invoices to the LOCALITY for the LOCALITY's share of eligible project expenses incurred by the DEPARTMENT in the performance of activities pursuant to paragraph 2.a.
  - d. Audit the LOCALITY's Project records and documentation as may be required to verify LOCALITY compliance with federal and state laws and regulations.
  - e. Make available to the LOCALITY guidelines to assist the parties in carrying out responsibilities under this Agreement.
3. Appendix A identifies the funding sources for the project, phases of work to be administered by the LOCALITY, and additional project-specific requirements

agreed to by the parties. There may be additional elements that, once identified, shall be addressed by the parties hereto in writing, which may require an amendment to this Agreement.

4. If designated by the DEPARTMENT, the LOCALITY is authorized to act as the DEPARTMENT's agent for the purpose of conducting survey work pursuant to Section 33.2-1011 of the Code of Virginia, 1950, as amended.
5. Nothing in this Agreement shall obligate the parties hereto to expend or provide any funds in excess of funds agreed upon in this Agreement or as shall have been included in an annual or other lawful appropriation. In the event the cost of a Project is anticipated to exceed the allocation shown for such respective Project on Appendix A, both parties agree to cooperate in providing additional funding for the Project or to terminate the Project before its costs exceed the allocated amount, however the DEPARTMENT and the LOCALITY shall not be obligated to provide additional funds beyond those appropriated pursuant to an annual or other lawful appropriation.
6. Nothing in this Agreement shall be construed as a waiver of the LOCALITY's or the Commonwealth of Virginia's sovereign immunity.
7. The Parties mutually agree and acknowledge, in entering this Agreement, that the individuals acting on behalf of the Parties are acting within the scope of their official authority and the Parties agree that neither Party will bring a suit or assert a claim against any official, officer, or employee of either party, in their individual or personal capacity for a breach or violation of the terms of this Agreement or to otherwise enforce the terms and conditions of this Agreement. The foregoing notwithstanding, nothing in this subparagraph shall prevent the enforcement of the terms and conditions of this Agreement by or against either Party in a competent court of law.
8. The Parties mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than the Parties, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for, without limitation, personal injury, property damage, breach of contract, or return of money, or property, deposit(s), cancellation or forfeiture of bonds, financial instruments, pursuant to the terms of this Agreement or otherwise. Notwithstanding any other provision of this Agreement to the contrary, unless otherwise provided, the Parties agree that the LOCALITY or the DEPARTMENT shall not be bound by any agreements between the either party and other persons or entities concerning any matter which is the subject of this Agreement, unless and until the LOCALITY or the DEPARTMENT has, in writing, receive a true copy of such agreement(s) and has affirmatively agreed, in writing, to be bound by such Agreement.
9. This Agreement may be terminated by either party upon 30 days advance written notice. Eligible Project expenses incurred through the date of termination shall be

reimbursed in accordance with paragraphs 1.f, 1.g., and 2.b, subject to the limitations established in this Agreement and Appendix A. Upon termination, the DEPARTMENT shall retain ownership of plans, specifications, and right of way, unless all state and federal funds provided for the Project have been reimbursed to the DEPARTMENT by the LOCALITY, in which case the LOCALITY will have ownership of the plans, specifications, and right of way, unless otherwise mutually agreed upon in writing.

10. Prior to any action pursuant to paragraphs 1.b or 1.g of this Agreement, the DEPARTMENT shall provide notice to the LOCALITY with a specific description of the breach of agreement provisions. Upon receipt of a notice of breach, the LOCALITY will be provided the opportunity to cure such breach or to provide a plan to cure to the satisfaction to the DEPARTMENT. If, within sixty (60) days after receipt of the written notice of breach, the LOCALITY has neither cured the breach, nor is diligently pursuing a cure of the breach to the satisfaction of the DEPARTMENT, then upon receipt by the LOCALITY of a written notice from the DEPARTMENT stating that the breach has neither been cured, nor is the LOCALITY diligently pursuing a cure, the DEPARTMENT may exercise any remedies it may have under this Agreement.

THE LOCALITY and DEPARTMENT acknowledge and agree that this Agreement has been prepared jointly by the parties and shall be construed simply and in accordance with its fair meaning and not strictly for or against any party.

THIS AGREEMENT, when properly executed, shall be binding upon both parties, their successors, and assigns.

THIS AGREEMENT may be modified in writing by mutual agreement of both parties.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written.

**COUNTY OF FAIRFAX, VIRGINIA:**

\_\_\_\_\_

\_\_\_\_\_  
Typed or printed name of signatory

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

NOTE: The official signing for the LOCALITY must attach a certified copy of his or her authority to execute this Agreement.

**COMMONWEALTH OF VIRGINIA, DEPARTMENT OF  
TRANSPORTATION:**

\_\_\_\_\_  
Chief of Policy  
Commonwealth of Virginia  
Department of Transportation

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

**Attachments**

Appendix A (UPC 106274)

## Appendix A

Project Number: 0644-029-175 UPC: 106274 CFDA # 20.205 Locality: Fairfax County

Project Location ZIP+4: 22150-2804	Locality DUNS# 74837626	Locality Address (incl ZIP+4): 4050 Legato Road, Suite 400 Fairfax, VA 22033-2867
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**Project Narrative**

Scope:	Springfield CBC Commuter Parking Garage
From:	At Old Keene Mill Road Commuter Lot
To:	
Locality Project Manager Contact info:	Deepak Bhinge, P.E. 703-324-8770 <a href="mailto:Deepak.Bhinge@fairfaxcounty.gov">Deepak.Bhinge@fairfaxcounty.gov</a>
Department Project Coordinator Contact Info:	Derick Undan 703-259-3347 <a href="mailto:Rhoderick.Undan@VDOT.Virginia.gov">Rhoderick.Undan@VDOT.Virginia.gov</a>

**Project Estimates**

	Preliminary Engineering	Right of Way and Utilities	Construction	Total Estimated Cost
Estimated Locality Project Expenses	\$5,200,000	\$3,100,000	\$0	\$8,300,000
Estimated VDOT Project Expenses	\$300,000	\$10,000	\$0	\$310,000
Estimated Total Project Costs	\$5,500,000	\$3,110,000	\$0	\$8,610,000

**Project Cost and Reimbursement**

Phase	Estimated Project Costs	Funds type (Choose from drop down box)	Local % Participation for Funds Type	Local Share Amount	Maximum Reimbursement (Estimated Cost - Local Share)	Estimated Reimbursement to Locality (Max. Reimbursement - Est. VDOT Expenses)
Preliminary Engineering	\$1,237,500	Other - Local (FTA)	100%	\$1,237,500	\$0	
	\$3,962,500	Local Funds	100%	\$3,962,500	\$0	
	\$300,000	CMAQ	0%	\$0	\$0	
				\$0	\$0	
<b>Total PE</b>	\$5,500,000			\$5,200,000	\$0	\$0
Right of Way & Utilities	\$3,110,000	CMAQ	0%	\$0	\$3,110,000	
				\$0	\$0	
<b>Total RW</b>	\$3,110,000			\$0	\$3,110,000	\$3,100,000
Construction	\$0	CMAQ	0%	\$0	\$0	
	\$0	Local Funds	100%	\$0	\$0	
<b>Total CN</b>	\$0			\$0	\$0	\$0
<b>Total Estimated Cost</b>	\$8,610,000			\$5,200,000	\$3,110,000	\$3,100,000

**Total Maximum Reimbursement by VDOT to Locality (Less Local Share)**

	\$3,110,000
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**Estimated Total Reimbursement by VDOT to Locality (Less Local Share and VDOT Expenses)**

	\$3,100,000
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**Project Financing**

CMAQ	State Match	Local Funds (FTA)	Local Funds (C&I Tax)	Aggregate Allocations
\$37,118,841	\$9,028,149	\$1,237,500	\$10,600,000	\$57,984,490

**Program and project Specific Funding Requirements**

- This project shall be administered in accordance with VDOT's Locally Administered Projects Manual
- In accordance with Chapter 12.1.3 (Scoping Process Requirements) of the LAP Manual, the locality shall complete project scoping on or before 5/30/2016.
- This is a limited funds project. The Locality shall be responsible for any additional funding in excess of \$3,110,000 (if applicable)
- This project is funded with federal-aid Congestion Mitigation and Air Quality Program (CMAQ) funds. These funds must be obligated within 24 months of allocation and expended within 48 months of the obligation.
  - FY05 \$3,000,000 Allocation by the CTB, Expenditure deadline 6/30/2016
  - FY07 \$1,173,990 Allocation by the CTB, Expenditure deadline 6/30/2016
  - FY13 \$5,735,844 Allocation by the CTB, Expenditure deadline 6/30/2018
  - FY14 \$8,291,540 Allocation by the CTB, Expenditure deadline 6/30/2019
- This project is funded with federal-aid Congestion Mitigation and Air Quality Program (CMAQ) funds. These funds must be obligated within 12 months of allocation and expended within 36 months of the obligation.
  - FY15 \$11,334,100 Allocation by the CTB, Expenditure deadline 6/30/2018
  - FY16 \$6,371,509 Allocation by the CTB, Obligation deadline 6/30/2016, Expenditure deadline 6/30/2019
  - FY17 \$10,240,007 Allocation by the CTB, Obligation deadline 6/20/2017, Expenditure deadline 6/30/2020
- Total project allocations:** \$57,984,490

\_\_\_\_\_  
Authorized Locality Official and date

Tom Biesiadny

Typed or printed name of person signing

\_\_\_\_\_  
Authorized VDOT Official and date

Ray Burkhardt

Typed or printed name of person signing

Version 8/19/11



ACTION - 6

Authorization for the Expenditure of Funds for the Purchase of Bikeshare Equipment and Implementation of Bikeshare Program (Hunter Mill and Providence Districts)

ISSUE:

Board authorization for the Director of the Department of Transportation to (1) expend funds for purchase of bikeshare equipment, and (2) implement a bikeshare program in Reston and Tysons.

RECOMMENDATION:

The County Executive recommends that the Board authorize the Director of the Department of Transportation to expend funds and to purchase bikeshare equipment for implementation of a bikeshare program in Reston and Tysons.

TIMING:

Board action is requested on January 12, 2016, to ensure that the initial phase of the bikeshare program can be implemented in Fall 2016. This will allow the program to have the best chance to be established before Winter 2016-2017.

BACKGROUND:

Bikeshare is a transportation system that allows individuals to check out a bike and ride short to moderate distances from station to station. A system of bikeshare stations and bicycles are set up in an area to allow participants to travel between destinations that are generally further than walking, without driving. As a result, roadway congestion is reduced.

In the Washington D.C. area, Capital Bikeshare is the existing bikeshare system that operates in Washington D.C., Arlington County, Alexandria, and Montgomery County. There are currently over 370 stations in the Capital Bikeshare system in these jurisdictions.

In 2014, the Metropolitan Washington Council of Governments (MWCOC) awarded Fairfax County, a Transportation and Land Use Connection grant to study the feasibility of launching a bikeshare system. The results of the study showed that bikeshare could succeed as a viable transportation option in Reston.

Board Agenda Item  
January 12, 2016

The proposed Reston Bikeshare system will consist of 15 stations and 132 bicycles, located between the Wiehle-Reston East Metrorail Station and the Reston Town Center area.

In summer 2015, the Virginia Department of Transportation (VDOT), in partnership with Fairfax County, and with the support of the Tysons Partnership, implemented several miles of bike lanes in Tysons. This new infrastructure provoked the idea that a bikeshare system could succeed in Tysons, as well as Reston. The Tysons Partnership approached FCDOT with a proposal to bring bikeshare to Tysons and make a financial contribution to initial capital cost on the operation of the system. The Partnership has expressed a willingness to contribute to the initial capital cost, as well as the operating costs to implement bike share in Tysons.

The proposed Tysons Bikeshare system will consist of 11 stations and 80 bicycles, located in Tysons to the east of Route 7, north of Route 123, and south of the Dulles Toll Road.

While there are a number of bikeshare operators across the county, the Capital Bikeshare program already has a strong presence in the Washington, D.C. metro area. Accordingly, if the Board authorizes this item, FCDOT staff, together with staff from the Department of Purchasing and Supply Management, will first pursue an agreement, in concert with the other Capital Bikeshare jurisdictions to order the bikeshare equipment through an existing contract through an existing contract that Arlington County competitively procured. Fairfax County DOT staff recommends that the County join the regional Capital Bikeshare System with stations in Reston and Tysons.

On June 18, 2013, the Board of Supervisors endorsed the applications for Transportation Alternatives Projects related to Bikeshare in Reston. In 2014, the Regional Transportation Planning Board awarded \$400,000 for the Reston Bikeshare Infrastructure project.

There is a five month lead time on the purchase of the bike sharing equipment, if the County executes the agreement in February 2016, equipment should be ready to install in summer 2016. It is anticipated that the system will be operational in Fall 2016.

FISCAL IMPACT:

The project agreement for the Reston Bikeshare Transportation Alternative Program (TAP) Grant was authorized by the Board on February 17, 2015, in the amount of \$500,000, which included \$100,000 in local funding for the local match. These funds were also approved by the Board on February 17, 2015. They are located in Funds 50000, and 40010.

Board Agenda Item  
January 12, 2016

TAP grant funding will be used to the purchase of bike share stations and bicycles for the Reston System. An estimated additional \$308,000 is required to complete the purchase of Capital Bikeshare Equipment for Reston. In addition an estimated \$300,000 is required for the design and construction of concrete pads where the stations will be located.

Due to the interest of the Tysons Partnership and their expressed willingness to participate in the program financially, FCDOT recommends proceeding with the purchase of bikeshare equipment for Tysons using county funding. The Tysons bikeshare system will require an estimated \$516,000 for the purchase and installation of the bikeshare stations and bicycles.

Forty additional bikeshare system docks and 20 additional bicycles will be purchased to allow for near term expansion at existing stations in both Reston and Tysons at an anticipated cost of \$77,000.

As part of the Fund 40010 (County and Regional Transportation Projects) FY 2015 Carryover, the Board approved \$1.5 million in additional funding for the Bicycle Facilities Program to advance projects. \$1.2 million of this funding will be used to purchase capital infrastructure and equipment for both Reston and Tysons Bikeshare Programs. There is no impact to the General Fund. Following the execution of a formal agreement with the Tysons Partnership, any amounts contributed by the Tysons Partnership will be returned to Fund 40010.

Fairfax County Bikeshare Funding

**Reston**

Expenses

Capital Expenses for Equipment	\$793,000
<u>Capital Expenses for Station Design &amp; Construction</u>	<u>\$300,000</u>
Total Reston Capital Expenses	\$1,093,000

Funding

TAP Grant Funding (less VDOT administrative costs) *	\$385,000
<u>Local Funding (Fund 40010) **</u>	<u>\$708,000</u>
Total Reston Capital Funding	\$1,093,000

\*Additional application for FY 2016 TAP funding has also been submitted to VDOT

\*\*Includes LCM for TAP grant.

**Tysons**

**Expenses**

Capital Expenses for Equipment	\$516,000
Total Tysons Capital Funding	\$516,000

**Funding**

Local Funding (Fund 40010)	\$516,000
Total Tysons Capital Funding	\$516,000

\*If agreement can be reached with the Tysons Partnership, a portion of this may be returned to Fund 40010. The partnership discussed contributing \$110,000 toward these capital costs.

**Total Fairfax County System**

**Expenses**

Reston Capital Expenses	\$1,093,000
Tysons Capital Expenses	\$516,000
Capital Expenses for Station Expansion	\$77,000
<b>Estimated Total Capital Expenses</b>	<b>\$1,686,000</b>

**Funding**

TAP Grant Funding	\$385,000
Local Funding (Fund 40010)	\$1,301,000
<b>Estimated Total System Funding</b>	<b>\$1,686,000</b>

\*Includes LCM for TAP grant.

\*If agreement can be reached with the Tysons Partnership, a portion of this may be returned to fund 40010. The partnership discussed contributing \$110,000 toward these capital costs.

**ENCLOSED DOCUMENTS:**

None

**STAFF:**

Robert A. Stalzer, Deputy County Executive  
Joe LaHait, Department of Management and Budget  
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)  
Eric M. Teitelman, P.E., Chief, Capital Projects and Operations Division, FCDOT  
Todd Wigglesworth, Acting Chief, Coordination and Funding Division, FCDOT  
Adam Lind, Capital Projects and Operations Division, FCDOT  
Ray Johnson, Coordination and Funding Division, FCDO

ACTION – 7

Approval of an Amendment to the Amended and Restated Lease with Fairfax Corner Mixed Use, L.C. to Expand the Acceptable Uses on County Property and Add Termination Language (Braddock District)

ISSUE:

Board approval of an amendment to the Amended and Restated Lease with Fairfax Corner Mixed Use, L.C for purposes of expanding the acceptable uses on County property and adding termination language.

RECOMMENDATION:

The County Executive recommends that the Board approve, in substantial form, the “First Amendment to Amended and Restated Lease” included as Attachment I. The amendment will expand the acceptable uses on County property and add termination language.

TIMING:

The Board should act on this item on January 12, 2016, because Fairfax Corner Mixed Use, L.C., is interested in beginning construction of a new parking garage as soon as possible.

BACKGROUND:

In 2001, Fairfax County received a dedication of land, known as Fairfax Corner Land Bay 1, at the intersection of Government Center Parkway and Monument Drive as part of a rezoning. This land was provided for a parking facility for a future Metrorail station. Subsequently, the Board approved an agreement with Fairfax Corner Mixed Use, L.C. (Fairfax Corner) to lease the property to back to Fairfax Corner for purposes of parking for its retail development. Fairfax Corner has paid the County \$50,000 annually to lease the property. The lease contains automatic renewal provisions and a termination cause related to the approval of a Full Funding Grant Agreement by the Federal Transit Administration for the extension of Metrorail in the I-66 Corridor.

In November 2015, Fairfax Corner approached County staff to request an amendment to the lease to allow Fairfax Corner to use a portion of the property to locate an office trailer on the site during the construction of a new parking garage at Fairfax Corner.

Board Agenda Item  
January 12, 2016

In addition, during much of 2015, the Virginia Department of Transportation has been developing a project to add express lanes on I-66 outside the Beltway. Phase 1 of the project includes two express lanes in each direction from the Beltway to Gainesville; significant increases in bus service along the corridor; additional park-and-ride lots; transportation demand management; a parallel trail; and numerous interchanges improvements. One of the proposed park-and-ride lots associated with this project is at the subject site that is being leased by Fairfax Corner. The Commonwealth Transportation Board approved the preferred alternative for the project on October 27, 2015, and is proceeding with the procurement process for the project.

At the time the County entered into the lease with Fairfax Corner, the concept of express lanes in the I-66 corridor was not envisioned. As such, the only termination provisions associated with the agreement were focused on a future Metrorail extension. Since the express lanes are now a likely possibility, the County staff recommends including a termination provision in the agreement that reflects the current plans for the corridor. The proposed amendment will permit the Board to terminate the lease upon two years advanced notice, if it elects to make the leased property available as a parking lot for commuters who wish to take advantage of bus service and carpooling opportunities associated with the proposed I-66 express lanes project.

FISCAL IMPACT:

By terminating the lease in 2021, the County will forgo the annual lease payments between 2021 and whenever the Federal Transit Administration approves a Full Funding Grant Agreement for the extension of Metrorail in the I-66 Corridor.

ENCLOSED DOCUMENTS:

Attachment I: First Amendment to Amended and Restated Lease

Attachment II: Amended and Restated Lease between Fairfax County and Fairfax Corner Mixed Use, L.C.

STAFF:

Robert A. Stalzer, Deputy County Executive

Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)

Alan Weiss, Assistant County Attorney

**FIRST AMENDMENT TO AMENDED AND RESTATED LEASE**

This First Amendment to Amended and Restated Lease ("First Amendment") is made and entered into as of \_\_\_\_\_, 2016, by and between the **BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**, a body corporate and politic ("Landlord"), and **FAIRFAX CORNER MIXED USE, L.C.**, a Virginia limited liability company ("Tenant").

**RECITALS**

**R-1.** Landlord and Tenant entered into a lease dated as of the 10<sup>th</sup> day of August, 2001, as such lease was amended and restated in its entirety by that certain Amended and Restated Lease dated May 4, 2009 (collectively, the "Lease") for certain premises known as Fairfax Corner Land Bay 1 located in Fairfax, Virginia, as more particularly described on **Exhibit A** to the Lease (the "Premises").

**R-2.** Landlord and Tenant desire to amend the Lease to, *inter alia*, expand the permitted use of the Premises during the Parking Facility Construction Period (as such term is defined in the Lease).

**R-3.** Landlord and Tenant also desire to amend the Lease to permit Landlord to terminate the Lease for purposes of providing commuter parking to enable users to take advantage of bus service and carpooling opportunities associated with the proposed I-66 express lanes project.

**NOW THEREFORE**, in consideration of the Premises, the mutual covenants set forth herein and in the Lease, and Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the parties hereto, intending to be legally bound, Landlord and Tenant agree to amend the Lease as follows:

1. Notwithstanding anything to the contrary contained herein, Landlord and Tenant hereby agree that during the Parking Facility Construction Period and the period of construction of any other buildings or structures on Lots B and C of Fairfax Corner, such period of construction not to exceed 730 calendar days, that the Tenant will be permitted to use a portion of the Premises for the location of temporary construction offices and associated parking and storage within a fenced area of the Premises provided that such use will not result in a reduction of more than 40 parking spaces.

2. Recital R-6 of the Lease is hereby deleted in its entirety and replaced with the following:

"R-6 Landlord and Tenant further desire to amend the Original Lease to provide for a modification of termination rights, including that (i) Tenant may terminate the Lease after the Initial Term upon one (1) year's notice, (ii) Landlord may terminate the Lease after the Initial

Term upon two (2) years' notice, and (iii) Landlord may terminate the Lease at any time upon two (2) years' notice provided (a) Landlord has received a full funding grant agreement or equivalent guaranty of construction funding for the extension of the Metro rail to the vicinity of Premises ("Full Funding Grant Agreement"), or (b) Landlord elects to provide public commuter parking on the Premises to enable commuters to use bus service from the Premises to take advantage of the proposed I-66 express lanes."

3. Section 2.07 of the Lease is hereby modified by the addition of the following subsection (c):

"(c) "Notwithstanding anything to the contrary contained herein, at any time during the Initial Term or the Extension Term, Landlord may terminate this Lease upon no less than two (2) years prior written notice to Tenant in the event Landlord desires to use the Premises for public parking to enable commuters to take bus service from the Premises taking advantage of bus service and carpooling opportunities associated with the proposed I-66 express lanes project."

Except as expressly modified herein, the Lease remains unchanged, is ratified and continues in full force and effect.

**[Signatures on Following Pages]**



**IN WITNESS WHEREOF**, Landlord and Tenant have caused this First Amendment to be executed as of the date first hereinabove written.

**LANDLORD:**

**BOARD OF SUPERVISORS OF  
FAIRFAX COUNTY, VIRGINIA**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA:

: to-wit

COUNTY OF FAIRFAX:

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me appeared \_\_\_\_\_, the \_\_\_\_\_ of the Board of Supervisors of Fairfax County, Virginia, after being first duly sworn, acknowledged that he/she executed the above First Amendment to Amended and Restated Lease, and the same was his/her free act and deed on behalf of the Board of Supervisors of Fairfax County, Virginia., the Landlord hereunder.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**TENANT:**

**FAIRFAX CORNER MIXED USE, L.C.**

By: MVP MANAGEMENT, LLC,  
a Virginia limited liability company,  
its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Manager

COMMONWEALTH OF VIRGINIA:

: to-wit

COUNTY OF FAIRFAX:

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me appeared \_\_\_\_\_,  
the \_\_\_\_\_ of MVP Management, LLC, a Virginia limited liability company, the  
Manager of Fairfax Corner Mixed Use, L.C., a Virginia limited liability company, after being  
first duly sworn, acknowledged that he/she executed the above First Amendment to Amended  
and Restated Lease, and the same was his/her free act and deed on behalf of Fairfax Corner  
Mixed Use, L.C., the Tenant hereunder.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**AMENDED AND RESTATED LEASE**

**between**

**BOARD OF SUPERVISORS OF  
FAIRFAX COUNTY, VIRGINIA**

**and**

**FAIRFAX CORNER MIXED USE, L.C.**

**Dated May 4, 2009**

**LEASE AGREEMENT**

**AMENDED AND RESTATED LEASE AGREEMENT ("Lease")** made as of the 4 th day of May, 2009, by and between the **BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**, a body corporate and politic, having an address at 12000 Government Center Parkway, Fairfax, Virginia 22035 ("Landlord"), and **FAIRFAX CORNER MIXED USE, L.C.**, a Virginia limited liability company, having an address at c/o The Peterson Companies, 12500 Fair Lakes Circle, Suite 400, Fairfax, Virginia 22033 ("Tenant").

**RECITALS**

R-1 Pursuant to an agreement (the "Agreement") between Landlord, as the purchaser thereunder, and Tenant, as seller thereunder, dated as of March 27, 2001 ("Contract"), Landlord agreed to acquire, and Tenant agreed to convey, that certain real property known as Fairfax Corner Land Bay 1 located in Fairfax, Virginia, as more particularly described on **Exhibit A** attached hereto (the "Premises").

R-2 Pursuant to the Agreement, Landlord agreed that immediately upon Landlord's acquisition of the Premises pursuant to the Agreement, Landlord would lease back to Tenant the Premises on the terms and conditions as are set forth herein.

R-3 In accordance with the Agreement, Landlord and Tenant entered into a lease (the "Original Lease") dated as of the 10<sup>th</sup> day of August, 2001 ("Effective Date"), for the Premises.

R-4 The Original Lease provided for an "Initial Term" as defined in Section 2.01 thereof to cover the period from the Effective Date until August 10, 2011.

R-5 Landlord and Tenant desire to extend the Initial Term as set forth in the Original Lease until August 10, 2021.

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R-6 Landlord and Tenant further desire to amend the Original Lease to provide for a modification of termination rights, including that (i) Tenant may terminate the Lease after the Initial Term upon one (1) year's notice, (ii) Landlord may terminate the Lease after the Initial Term upon two (2) years' notice, and (iii) Landlord may terminate the Lease at any time upon two (2) years' notice provided a Landlord has received a full funding grant agreement or equivalent guaranty of construction funding for the extension of the Metro rail to the vicinity of Premises ('Full Funding Grant Agreement').

R-7 Landlord also desires to amend the Original Lease to permit Landlord to use the Premises for (i) a commuter parking lot, (ii) short-term parking for County staff and public buses during the annual Celebrate Fairfax Festival, and (iii) on a periodic basis for training purposes for the Fairfax County Police, Fairfax County Fire Department, Fairfax County Connector bus drivers and operators, and other public agencies).

R-8 In order to affect the foregoing modifications to the Original Lease, Landlord and Tenant desire to enter into this Amended and Restated Lease setting forth all of the terms and conditions of the Original Lease as amended herein.

## **ARTICLE ONE**

### **Premises**

Section 1.02. The foregoing demise is made subject to the following:

- (a) All restrictions, regulations and statutes, and amendments and additions thereto, of any and all federal, state, county, and municipal authorities having jurisdiction thereof;
- (b) All covenants, restrictions, easements, reservations and agreements recorded prior to the date of execution of this Lease;
- (c) Any state of facts which an accurate survey may show;
- (d) Building restrictions and regulations, zoning ordinances and regulations and any amendments thereto now or hereafter in force and effect;
- (e) The lien of all taxes, assessments, water charges and sewer rents, if any, that have not become due and payable prior to the Effective Date;
- (f) The condition and state of repair of the Premises as the same may be on the Effective Date, including all deterioration, injury, loss, damage or destruction which may have occurred prior to such date.

## **ARTICLE TWO**

### **Term of the Lease and Contingencies**

**Section 2.01.** The initial term of the Lease ("Initial Term") shall be for a period commencing on the Effective Date of August 10, 2001, and terminating at midnight on August 10, 2021 ("Initial Term Termination Date").

**Section 2.02.** Tenant shall also have the option to extend the term of the Lease for a period of ten (10) years (the "Extension Term") upon delivery of written notice to Landlord no later than one (1) year in advance of the Initial Term Termination Date, which such extension shall commence upon the day following the Initial Term Termination Date and end on August 10, 2031 (the "Extension Term Termination Date").

**Section 2.03.**

- (a) The parties shall negotiate in good faith to attempt to agree upon the then fair market rental value of Premises for the twelve (12) month period commencing upon August 10, 2016, and ending August 9, 2017, as improved with paved parking as required hereunder. If the parties fail to agree upon such rental by May 10, 2016 (such date being referred to herein as the "Rental Determination Date"), then the following procedure shall be implemented:
  - (i) for a period of fifteen (15) days, after the Rental Determination Date, the parties agree in good faith to attempt to agree upon a "Designated Appraiser" meeting qualifications of a "Qualified Appraiser" as defined in Section 2.03(iv) below;
  - (ii) if the parties are unable to agree upon a single Designated Appraiser within the fifteen (15) day period after the Rental Determination Date, each party shall appoint its own Qualified Appraiser within ten (10) days thereafter. The two Qualified Appraisers so appointed shall then promptly, within fifteen (15) days after their appointment, select a third Qualified Appraiser who shall serve as the Designated Appraiser and perform the appraisal as described in Section 2.03(iii) below;
  - (iii) the Designated Appraiser shall be instructed to use his or her best efforts with the information reasonably available to determine in accordance with standard appraisal practices the market rental value of the Premises, as improved with the "Improvements" as hereafter defined;
  - (iv) each Qualified Appraiser ("Qualified Appraiser") shall be an MAI licensed in the Commonwealth of Virginia, specializing in the field of commercial real estate in the vicinity of the Premises and having no less five (5) years experience in such field, and recognized as

ethical and reputable in his or her field;

- (v) the parties agree that the decision of the Designated Appraiser selected in accordance with the terms herein shall be final and binding on the parties hereto and their successor and assignee; and
  - (vi) the fee of the Designated Appraiser shall be shared equally between Landlord and Tenant. If the Designated Appraiser is chosen by the two Qualified Appraisers selected, respectively, by Landlord and Tenant in accordance with Section 2.03(ii) hereinabove, each party shall pay, in addition to one-half of the fee of the Designated Appraiser, the entire fee of the Qualified Appraiser it appoints.
- (b) Commencing on August 10, 2017, and on every one (1) year anniversary thereafter through the expiration of the Term, the "Basic Rent" (as such term is defined in Section 6.01 below) shall increase by the same percentage increase in the "CPI" (as such term is defined below) over the previous twelve (12) month period.

"CPI" shall, whenever used in this Lease, mean the Consumer Price Index for All Urban Consumers – U.S. Average, All Items (1982-1984=100), published by the Bureau of Labor Statistics of the U.S. Department of Labor, or any substitute or successor index thereto, appropriately adjusted.

Section 2.04. The term of this Lease ("Term") shall consist of the Initial Term as may be extended by the Extension Term, if any.

Section 2.05. Upon expiration of the Term of this Lease or earlier termination in accordance with the terms herein, all of Tenant's interest in the Premises shall terminate, provided that any prepaid rent for the period after termination shall be paid to Tenant within thirty (30) days after the termination of the Lease.

Section 2.06. Notwithstanding anything to the contrary contained herein, Landlord and Tenant agree that at anytime after the Initial Term Termination Date, Tenant shall have the right to terminate this Lease upon one (1) years' prior written notice thereof to Landlord.

Section 2.07.

- (a) Notwithstanding anything to the contrary contained herein, at any time during the Initial Term or the Extension Term, if the Landlord obtains a Full Funding Grant Agreement, then, as of the effective date of such Full Funding Grant Agreement, Landlord may terminate this Lease upon two (2) years' prior written notice to Tenant.

- (b) In addition, at any time after the Initial Term Termination Date, Landlord may terminate this Lease upon no less than two (2) years prior written notice to Tenant, in the event Landlord passes a resolution to use the Premises for transit support uses (excluding any commuter parking lot purposes, which commuter parking lot purposes shall be governed by Section 4.01 hereof). Notwithstanding the foregoing, Landlord agrees to endeavor in good faith to provide Tenant with more than two (2) years' prior written notice before terminating this Lease and using the Premises for transit support services.

### **ARTICLE THREE**

#### **Condition of Premises**

Section 3.01. As Tenant has owned the Premises up until the Effective Date and as Tenant has continuously occupied the Premises and shall continue to so occupy the Premises pursuant to the terms of this Lease, Tenant hereby agrees that it is fully satisfied with the condition thereof and agrees to accept the same "as is." Tenant further acknowledges that Landlord has not made any representations as to such physical condition or as to any other matter or thing affecting or relating to the Premises.

### **ARTICLE FOUR**

#### **Use of Premises**

Section 4.01. Tenant shall use the Premises solely for temporary parking provided, however, that during the first two (2) years of the Term of this Lease, Tenant shall have the right to use the Premises for the storage of dirt for Tenant's Fairfax Corner project adjacent to the Premises. Tenant shall use the Premises solely for temporary parking provided, however, that during the first two (2) years of the Term of this Lease, Tenant shall have the right to use the Premises for the storage of dirt for Tenant's Fairfax Corner project adjacent to the Premises in accordance with all applicable laws, rules, orders, ordinances and regulations with respect thereto, including without limitation, all siltation and erosion controls, and provided further that Tenant shall indemnify and hold Landlord harmless from and against all costs, expenses, liabilities, losses, damages, injunctions, suits, fines, penalties, claims and demands, including attorneys' fees, including the value of legal services if provided by the County Attorney's Office, arising out of, by reason of, or in account of, any violation of or default in the requirements set forth in this Section 4.01, including without limitation the shifting or moving of the dirt.

Tenant has prepared a design for a paved parking lot on the Premises ("Design"), which Design is attached hereto as Exhibit B and made a part hereof. By execution hereof, Landlord hereby approves in its proprietary capacity the Design; provided, however, that such approval shall in no manner be intended and shall not be deemed to relate to, affect, limit or obligate the Board of Supervisors of Fairfax County in its governmental or regulatory capacity and/or the County of Fairfax, Virginia, or its agencies, departments or

divisions thereof (collectively, the "County") with respect to any actions the County may desire or request that pertain in any manner to the Design or any other matters under this Lease and the provisions hereof, including without limitation, any approval requests, inspections or other matters involving any governmental authorities. Following approval of the Design, Tenant shall cause the Premises to be improved with a paved parking lot constructed in accordance with the Design and in compliance with all governmental laws, rules and regulations applicable thereto (the "Improvements"), which Improvements shall thereafter be deemed a part of the Premises.

Without limiting the foregoing, Tenant shall not use or occupy, or permit or suffer the Premises, including the Improvements, or any part thereof to be used or occupied (i) for any unlawful or illegal business, use or purpose, (ii) for any business, use or purpose involving or producing any "hazardous substance" (as defined in the Comprehensive Environmental Response, Compensation and Liability Act 42 U.S.C. 9601(14), *et seq.* as amended), "hazardous waste" (as defined in the Resource Conservation and Recovery Act 42 U.S.C., Section 6901, *et seq.*, as amended), or "toxic substance" (as defined in the Toxic Substance Control Act, 15 U.S.C. Section 2601, *et seq.* as amended) in excess of legally permitted amounts, including without limitation, asbestos and items or equipment containing polychlorinated biphenyls, (iii) in any such manner to constitute a nuisance of any kind, (iv) for any purpose or in any way in violation of any non-residential-use permit or certificate of occupancy, or of any applicable insurance policies reasonably required to be maintained by Tenant under this Lease, or (v) for any purpose or in any way in violation of any applicable governmental laws, ordinances, orders, directives, rules or regulations.

Tenant shall indemnify and hold Landlord harmless from and against all costs, expenses, liabilities, losses, damages, injunctions, suits, fines, penalties, claims and demands, including attorneys' fees, including the value of legal services if provided by the County Attorney's Office, arising out of, by reason of, or in account of, any violation of or default in the covenants of this Section 4.01.

Notwithstanding the foregoing, Landlord shall have the right to use the Premises for training purposes between the hours of 4:00 a.m. Eastern Standard Time and 7:00 p.m. Eastern Standard Time, Monday through Friday, for the Fairfax County Police, Fairfax County Fire Department and other public agencies for no more than five (5) days during each month, except that during the "Parking Facility Construction Period" (as such term is defined below), Landlord shall be prohibited from using the Premises for training purposes.

Landlord and Tenant shall cooperate with one another to schedule such training uses in a manner that will limit disruption to Tenant's use of the Premises. In addition, excluding the Parking Facility Construction Period, during the calendar year 2009, every Tuesday, Wednesday and Thursday, between the hours of 7:00 a.m. Eastern Standard Time and 2:00 p.m. Eastern Standard Time, during the months of February, April, June, August, and September, Landlord may use the Premises for conducting five (5) week long training classes whereby new drivers and operators of Fairfax County Connector buses will be instructed on how to improve their driving skills and learn defensive driving techniques (hereinafter, collectively referred to as "Connector Bus Training").



Furthermore, Landlord shall have the right to use the Premises for short-term parking by Fairfax County staff vehicles and public buses during the annual Celebrate Fairfax Festival commencing with the fifth (5<sup>th</sup>) business day preceding the annual Celebrate Fairfax Festival and ending on the first (1<sup>st</sup>) business day following the Celebrate Fairfax Festival, except that during the Parking Facility Construction Period, Landlord shall be prohibited from using the Premises for these short-term parking purposes.

Tenant and Landlord also agree that (i) prior to the Initial Term Termination Date, Landlord shall have the exclusive right, between the hours of 4:00 a.m. Eastern Standard Time to 7:00 p.m. Eastern Standard Time, Monday through Friday, to use up to one hundred (100) contiguous parking spaces within the Premises as a commuter parking lot, in a location to be mutually agreed upon by the parties; and (ii) after the Initial Term Termination Date, and so long as the Parking Facility Construction Period is not then in effect (in which case the provisions applicable to such Parking Facility Construction Period shall govern), the Landlord shall have the exclusive right, between the hours of 4:00 a.m. Eastern Standard Time to 7:00 p.m. Eastern Standard Time, Monday through Friday, to use all of the parking spaces within the Premises for a commuter parking lot ((i) and (ii) collectively referred to as "Commuter Parking Purposes"), however, in addition to Tenant being allowed to use the Premises for temporary parking, Tenant reserves the right to tow away vehicles which have not been moved for a period of twenty-four (24) consecutive hours. Landlord and Tenant agree that if Landlord uses any portion of the Premises for Commuter Parking Purposes as described herein, then Landlord shall have the right and obligation, through the use of signage, to identify those spaces which are to be used for such Commuter Parking Purposes; however, no physical barriers may be utilized to segregate commuter parking spaces from other parking spaces located on the Premises.

Notwithstanding the foregoing, the parties agree that, commencing on the date the Fairfax County Department of Public Works and Environmental Services accepts a site plan and building permit application submitted by Tenant and Tenant has paid all applicable permit fees for the construction of a parking facility serving Fairfax Corner and until the earlier of the date (i) Tenant obtains an "Non-RUP" for such parking facility and (ii) Tenant is no longer diligently pursuing the construction of such parking facility (the "Parking Facility Construction Period"), Tenant may exclusively use all but one hundred (100) parking spaces located on the Premises for employee and patron parking.

Section 4.02. Tenant shall observe and comply with all conditions and requirements necessary to preserve and/or extend any and all governmental permits that are necessary for the use and operation of the Premises as temporary parking.

## **ARTICLE FIVE**

### **Alterations of the Improvements**

Section 5.01. Tenant shall not undertake or permit any material alterations or additions to the Premises, including the Improvements, without first obtaining the written consent of Landlord, which may be granted or withheld in Landlord's sole discretion, and otherwise

complying with the terms of this Lease; provided, however, that construction of the surface parking on the Premises in accordance with the Design and in accordance with all governmental authorities, and the repair and maintenance of the surface parking in accordance with the terms herein, are hereby consented to by Landlord, but solely in its proprietary capacity as the Landlord hereunder. Tenant shall bear the cost of all alterations made pursuant to this Section and shall bear full responsibility for the maintenance and repair thereof. If Tenant undertakes any alteration on the Improvements, Tenant shall be responsible for all costs and repair or replacement. Nothing in this section shall operate to relieve Tenant of its obligations described elsewhere in this Lease to perform all work on the Improvements in accordance with the applicable laws and regulations and to keep the Improvements free of any liens arising out of the work undertaken by or on behalf of Tenant. In addition, for any material alteration or addition, if not required by the County in its governmental capacity, Landlord may require a letter of credit, standard contractor's performance bond or other surety in form and amount and from a financial institution all as reasonably acceptable to Landlord.

Section 5.02. During the Term hereof, Tenant shall be obligated to operate, maintain and repair the Premises including the Improvements continuously and in good condition.

## **ARTICLE SIX**

### **Basic Rent**

Section 6.01. Tenant covenants and agrees to pay to Landlord, promptly when due, without notice or demand and without deduction or setoff of any amount for any reason whatsoever, as rent for the Premises ("Basic Rent") during the Term, Fifty Thousand (\$50,000) per year, payable in advance commencing as of the day that shall be the later of (i) ninety (90) days after the date of settlement under the Contract or (ii) February 28, 2001 ("Rent Commencement Date") and continuing on the anniversary date of the Rent Commencement Date for each year thereafter through August 9, 2016. Commencing as of August 10, 2016, Tenant shall continue to pay rent annually on each anniversary of the Rent Commencement Date at a rental to be determined in accordance with the provisions of Section 2.03.

Section 6.02. All amounts payable under this ARTICLE SIX, as well as all other amounts payable by Tenant to Landlord under the terms of this Lease, shall be paid at the office of Landlord at 4050 Legato Road, Suite 400, Fairfax, Virginia 22033, Attention: Director, Department of Transportation, or at such other places as Landlord shall from time to time designate by notice to Tenant, in lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment. Any Basic Rent not received by Landlord within five business days after the date due shall thereto accrue interest at the Default Rate at the rate of 300 basis points above the Prime Rate as published in the Wall Street Journal from time to time ("Default Rate").

Section 6.03. As provided in Sections 7.01 and 8.01 hereof, it is intended that the Basic Rent provided for in this ARTICLE SIX hereof shall be an absolutely net return to Landlord

throughout the Term of this Lease, free of any expense, charge or other deduction whatsoever, with respect to the Premises and/or the ownership, management, maintenance, repair, rebuilding, use or occupation thereof, or of any portion thereof, or with respect to any interest of Landlord therein, except for real estate taxes applicable to the Premises during the Term hereof ("Real Estate Taxes") which shall be the responsibility of Landlord.

#### **ARTICLE SEVEN** **Additional Rent**

Section 7.01. In addition to Basic Rent, Tenant shall also pay without notice or demand and without abatement, deduction or setoff, all Taxes (as hereinafter defined in Section 8.01 excluding, however, Real Estate Taxes) and all other sums of money required to be paid by Tenant under the terms of this Lease ("Additional Rent"). In the event of any non-payment of all or any part of Additional Rent, when due, Landlord shall have, at its option, the right to pay the same as provided herein.

Section 7.02. Any and all Additional Rent which may become due and payable to Landlord under this Lease shall bear interest at the Default Rate from the date which is five (5) business days after such Additional Rent shall become due and payable.

#### **ARTICLE EIGHT** **Taxes and Other Charges**

Section 8.01. Tenant agrees that it will pay and discharge, or cause to be paid and discharged, all federal, state and local taxes and charges, excluding Real Estate Taxes ("Taxes") when such become due and payable as required by applicable law, including without limitation, all personal property taxes, water charges, sewer charges and assessments associated with the Premises or Tenant's ownership interest therein.

Section 8.02. Any Taxes (excluding Real Estate Taxes) relating to a fiscal period of the taxing authority that falls in part within the Term and in part subsequent to the Term, shall, whether or not such Taxes shall be assessed, levied, imposed or become a lien upon the Premises, or shall become payable, during the Term, be apportioned and adjusted between Landlord and Tenant, as of the Effective Date and the last day of the Term.

Section 8.03. Tenant covenants to furnish to Landlord, if requested by Landlord, within ten (10) days after the last date when any tax must be paid by Tenant as provided in this ARTICLE EIGHT, official receipts of the appropriate taxing authority, or other proof satisfactory to Landlord, evidencing the payment thereof.

Section 8.04. If Tenant shall fail to pay any Taxes as in this ARTICLE EIGHT are required to be paid, after the same shall become due and payable, Landlord shall have the right, at its option, to pay the same with all interest and penalties thereon. As provided in ARTICLE SEVEN, the amount so paid shall constitute Additional Rent, but shall bear interest from

the date of such payment by Landlord at the Default Rate. Such Additional Rent shall be due and payable by Tenant on the fifth day of the month following the month in which payment by Landlord was made.

## **ARTICLE NINE**

### **Insurance**

**Section 9.01.** At all times during the Term, at its own cost and expense, Tenant shall provide and keep in force comprehensive general liability insurance in standard form, protecting Tenant and Landlord, as an additional insured, against personal injury, including without limitation, bodily injury, death or property damage and contractual liability on an occurrence basis, if available, and if not, then on a claims made basis, in either case in an amount not less than Two Million Dollars (\$2,000,000) per occurrence and with an annual aggregate limit of not less than Five Million Dollars (\$5,000,000). All such policies shall cover the entire Premises including the Improvements.

**Section 9.02.** At all times during the Term, at its own cost and expense, Tenant shall purchase and keep in force worker's compensation insurance and employer's liability insurance for all employees of Tenant in strict compliance with the laws of the Commonwealth of Virginia.

**Section 9.03.** All of the policies of insurance required by this Lease shall (i) be in form and substance as approved by Landlord in its reasonable discretion, (ii) be underwritten only by companies licensed in the Commonwealth of Virginia which have a then current Alfred M. Best Company, Inc. (or if it no longer exists, a then comparable rating service) general policyholder's rating of B+ or better (or the equivalent thereof) and a financial rating of VII or better (or the equivalent thereof), (iii) contain standard waiver of subrogation clauses; and (iv) provide that they may not be cancelled by the insurer for non-payment of premiums until at least ten (10) days after receipt by Landlord of the proposed cancellation and that they may not be cancelled for any other reasons until at least thirty (30) days after a receipt by Landlord of the proposed cancellation, and in any event shall not be invalidated, as to the interests of Tenant therein, by any act, omission or neglect of Tenant (other than nonpayment of premiums), which might otherwise result in a forfeiture or suspension of such insurance, including without limitation, the occupation or use of the Premises for purposes more hazardous than those permitted by the terms of the policy. Copies of all insurance certificates required by this Lease (if requested by Landlord) shall be delivered by Tenant to Landlord. All insurance policies shall be renewed by Tenant and proof of such renewals, accompanied by, if requested by Landlord, evidence of the payment of the premiums thereon to the insurance companies or their agents, shall be delivered to Landlord at least twenty (20) days prior to their respective expiration dates.

**Section 9.04.** If Tenant fails to obtain and maintain insurance as in this Lease provided, Landlord may, but shall not be obligated to, effect and maintain any such insurance coverage and pay premiums therefor. As provided in ARTICLE SEVEN, all premiums so paid by Landlord shall constitute Additional Rent and shall bear interest at the Default Rate from the date of such payment by Landlord. Such Additional Rent shall be payable by

Tenant to Landlord by the fifth day of the month following the month in which payment therefor is made by Landlord. In addition thereto, Landlord may recover from Tenant, and Tenant covenants and agrees to pay as Additional Rent to Landlord, any and all damages which Landlord may have sustained by reason of the failure of Tenant to obtain and maintain such insurance, it being expressly declared that any damages of Landlord shall not be limited to the amount of premiums thereon. Tenant shall make payment to Landlord by the fifth day of the month following the month in which any payments were made by Landlord or in which the amount of such damage was determined. The payment by Landlord of premiums for any such insurance policy shall not be, or be deemed to be, a waiver or release of the default of Tenant with respect thereto or the right of Landlord to pursue any other remedy permitted hereunder or by law as in the case of any other default hereunder or of default in the payment of Basic Rent or Additional Rent hereunder.

Section 9.05. Landlord's Insurance.

- (a) Landlord shall, at its sole cost and expense, in connection with Landlord's use of the Premises for such Connector Bus Training, procure and maintain at such times the following liability insurance in the amounts specified and in the form hereinafter provided for:
  - (i) Worker's Compensation insurance in amounts as required by applicable law and Employer's Liability insurance in an amount equal to that required by applicable law;
  - (ii) Commercial General Liability insurance in a combined single limit of not less than One Million and 00/100 Dollars (\$1,000,000.00) for each occurrence and One Million and 00/100 Dollars (\$1,000,000.00) in the aggregate for bodily injury or death or persons and/or loss of or damage to property;
  - (iii) Automobile Liability insurance in a combined single limit of not less than One Million and 00/100 Dollars (\$1,000,000.00) covering owned, non-owned, leased or hired vehicles for each occurrence for bodily injury or death of persons and/or loss of or damage to property; and
  - (iv) All Risk Property insurance for the full replacement cost of Landlord's personal property located in the Premises with a waiver of subrogation for the benefit of the Tenant, Peterson Management L.C., a Virginia limited liability company, The Peterson Companies L.C., a Virginia limited liability company and MVP Management, LLC, a Virginia limited liability company.

Notwithstanding the foregoing or anything to the contrary in this Agreement, Landlord may elect to self-insure those risks described in subsections (ii), (iii) and (iv) (if and to the extent permitted by applicable law).

- (b) All such insurance policies shall be issued by the Virginia Transit Liability Pool. Landlord shall furnish to Tenant, on or prior to the first day Landlord uses the Premises for such Connector Bus Training, certificates evidencing such coverage. Such certificates shall provide that (i) the insurance listed above is in full force and effect, (ii) Tenant, Peterson Management, L.C., a Virginia limited liability company, The Peterson Companies L.C., a Virginia limited liability company and MVP Management, LLC, a Virginia limited liability company are listed as additional insureds, and (iii) not less than thirty (30) days' written notice shall be given to Tenant prior to cancellation or material change of any policy. Prior to Landlord entering upon the Premises for Connector Bus Training, Landlord shall cause such certificates to be mailed or delivered to the address for notices set forth in this Lease.

## **ARTICLE TEN**

### **Applicable Laws and Regulations**

Section 10.01. Throughout the Term hereof, Tenant shall, at its own cost and expense, observe and comply with all laws, rules, orders, ordinances and regulations of the county, state and federal governments and of each and every department, entity, bureau and duly authorized official thereof and of any successor or future governmental authority, department, entity, bureau and duly authorized official thereof having jurisdiction and/or any other corporation, body or organization possessing similar authority and exercising similar functions, which laws, requirements, rules, orders, ordinances and regulations are now operative, or which at any time during the Term of this Lease may be operative and in force and effect and applicable to the Premises including the Improvements.

## **ARTICLE ELEVEN**

### **Construction of Improvements, Repairs and Maintenance**

Section 11.01. Subject to the provisions of ARTICLES SIXTEEN AND SEVENTEEN, throughout the Term, Tenant shall, without any cost or expense to Landlord: (i) cause the Improvements to be constructed in a good and workmanlike fashion, (ii) take good care of and keep in good order and repair, or cause the same to be done, the Improvements, all alterations, renovations, replacements, substitutions, changes and additions therein or thereto, all fixtures and appurtenances therein and thereto, all machinery and equipment therein, including without limitation, all machinery, pipes, plumbing, wiring, sidewalks, water, sewer and gas connections, and all other fixtures, machinery and equipment installed in or connected with the Premises including the Improvements or used in their operations; (iii) make all repairs, ordinary and extraordinary, structural or otherwise, necessary to preserve the Premises including the Improvements in good order and condition; (iv) promptly pay or cause the payment of the expense of such repairs; (v) not cause or permit any waste to the Premises; (vi) keep the sidewalks, curbs and parking in

good repair and reasonably free from snow, ice, dirt and rubbish; (vii) give prompt written notice to Landlord of any fire or other casualty that may occur; (viii) permit Landlord to enter the Premises, or any part thereof, to make repairs to the Improvements, to restore the same after damage or destruction by fire or other casualty or by partial condemnation, to complete repairs commenced but not completed by Tenant, to repair, at or before the end of the Term, all injury done by the installation or removal of Tenant's property, and/or to comply with all orders and requirements of any governmental authority applicable to the Improvements and to any occupation thereof, where, in Landlord's reasonable judgment, such entry is necessary to prevent waste, physical deterioration, safety hazards and/or other circumstances that threaten the value of the property provided that Landlord shall have given written notice thereof to Tenant with a reasonable opportunity to cure and where Tenant is in default of its covenants and obligations herein with respect to any of the foregoing matters.

Section 11.02. All maintenance shall be commenced no later than ten (10) days from receiving written notice of needed maintenance and repair from Landlord and completed within thirty (30) days of such notice as such thirty (30) day period may be extended if such maintenance or repair shall require a longer period provided that Tenant has commenced such maintenance or repair and diligently pursues the maintenance or repair thereafter. If Tenant shall fail to perform its maintenance obligations required hereunder within a reasonable time after written notice thereof, Landlord, in addition to all other available remedies, may, but shall not be obligated, to enter upon the Premises and perform such failed maintenance obligations of Tenant after notice thereof to Tenant, using any equipment or materials on the Premises suitable for such purpose. Tenant shall, on demand, reimburse Landlord for its actual costs so incurred, which shall be Additional Rent hereunder.

Section 11.03. Tenant shall permit Landlord and/or its authorized representative to enter the Premises during normal business hours after reasonable advance notice for the purpose of inspecting the same. Nothing in this Lease shall imply any duty or obligation upon the part of Landlord to do any work or to make any alterations, repairs (including, but not limited to, repairs and other restoration work made necessary due to any fire, other casualty or partial condemnation, irrespective of the sufficiency or availability of any fire or other insurance proceeds, or any award in condemnation, which may be payable in respect thereof), additions or improvements of any kind whatsoever to the Premises including the Improvements. The performance thereof by Landlord shall not constitute a waiver of Tenant's default in failing to perform the same.

Section 11.04. Notwithstanding anything to the contrary contained in this Lease, Landlord shall, in connection with Landlord's use of the Premises as described in Section 4.01, without any cost or expense to Tenant: (i) make all repairs, ordinary and extraordinary, structural or otherwise, to the Premises and the Improvements thereon attributable or associated with Landlord's use of the Premises; (ii) promptly pay or cause the payment of the expense of such repairs; (iii) not cause or permit any waste to the Premises in connection with Landlord's use of the Premises; and/or (iv) comply with all orders and requirements of any governmental authority applicable to Landlord's use of the Premises

and to Landlord's occupation thereof. All maintenance shall be commenced no later than ten (10) days from receiving written notice of needed maintenance and repair from Tenant and completed within thirty (30) days of such notice as such thirty (30) day period may be extended if such maintenance or repair shall require a longer period provided that Landlord has commenced such maintenance or repair and diligently pursues the maintenance or repair thereafter. If Landlord shall fail to perform its maintenance obligations required hereunder within a reasonable time after written notice thereof, Tenant, in addition to all other available remedies, may, but shall not be obligated, to enter upon the Premises and perform such failed maintenance obligations of Landlord after notice thereof to Landlord, using any equipment or materials on the Premises suitable for such purpose. Landlord shall, on demand, reimburse Tenant for its actual costs so incurred.

## **ARTICLE TWELVE**

### **Public Utilities and Services**

**Section 12.01.** Tenant agrees to pay or cause to be paid all charges for gas, water, sewer, electricity, light, heat, power, steam, air conditioning, telephone or other communication service or other public utility or public service used, rendered or supplied to, upon or in connection with the Premises throughout the Term, and to indemnify Landlord and hold Landlord harmless from and against any liability or damages on such account. Tenant shall also, at its sole cost and expense, procure or cause to be procured any and all necessary permits, licenses or other authorizations required for the lawful and proper use, occupation, operation and management of the Premises including Improvements, and for the lawful and proper installation and maintenance thereon and therein of wires, pipes, conduits, tubes and other equipment and appliances for use in supplying any such service thereto. Tenant expressly agrees that Landlord is not, nor shall it be, required to furnish to Tenant or any other occupant of the Premises including the Improvements, any water, sewer, gas, heat, electricity, light, power, steam, air conditioning, or any other facilities, equipment, labor, materials or services of any kind whatsoever.

## **ARTICLE THIRTEEN**

### **Liens and Encumbrances**

**Section 13.01.** Tenant shall not suffer or permit any liens to stand against the Premises, including the Improvements, or any part thereof, by reason of any work, labor, services or materials done for, or supplied to, or claimed to have been done for, or supplied to Tenant or anyone holding the Premises, including the Improvements, or any part thereof, through or under Tenant. If any such lien against the Premises, including the Improvements or any part thereof shall at any time be filed, Tenant shall cause the same to be discharged of record within thirty (30) days after the date of filing the same provided that Tenant has received written notice thereof. If Tenant shall fail to discharge any such lien against the Premises, including the Improvements or any part thereof within such period, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, procure the discharge of the same after notice to Tenant either by deposit in court, by



bonding, or by paying the amount claimed to be due. As provided in ARTICLE SEVEN, any amount paid or deposited by Landlord for any of the aforesaid purposes, and all legal and other expenses of Landlord, including attorneys' fees including the value of legal services if provided by the County Attorney's Office, and all necessary disbursements in connection therewith, in defending any such action or in procuring the discharge of such lien, shall constitute Additional Rent, and shall bear interest from the date of payment or deposit by Landlord at the Default Rate during the period that such payment or deposit is outstanding. Such Additional Rent shall become due and payable forthwith by Tenant to Landlord, or at the option of Landlord, shall be payable by Tenant to Landlord by the fifth day of the month following the month in which the payment or deposit was made by Landlord.

Section 13.02. Nothing in this Lease shall be deemed to be construed in any way as constituting the consent or request of Landlord, expressed or implied, by inference or otherwise, to any person, firm or corporation for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration or repair of or to the Premises, including the Improvements, or any part thereof, or as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials which might in any way give rise to the right to file any lien against Landlord's interest in the Premises. Notwithstanding the foregoing provisions of this Section 13.02, if such lien against the Premises, including the Improvements or any part thereof is filed, Tenant shall either pay the same and have it discharged of record, or take such action as may be required to legally discharge such lien, or to have such lien removed of record within thirty (30) days after the date of filing the same provided that Tenant has received written notice thereof, and in all events to have such liens against the Premises, including the Improvements or any part thereof discharged prior to the foreclosure thereof and the imposition of any penalty upon Landlord.

#### **ARTICLE FOURTEEN** **Exculpation and Indemnification**

Section 14.01. Landlord shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in or about the Premises, including the Improvements or the appurtenances thereto, or for any injury or damage to the Premises or including the Improvements, or to any property, whether belonging to Tenant or any other person, caused by any fire, breakage, leakage, defect or bad condition in any part or portion of the Premises. The provisions of this Lease permitting Landlord to enter and inspect the Premises are made for the purpose of enabling Landlord to become informed as to whether Tenant is complying with the agreements, terms, covenants and conditions thereof, but Landlord is under no obligation to perform such acts as Tenant shall fail to perform.

Section 14.02. Tenant shall indemnify and hold Landlord harmless from and against all liability, judgments, claims, demands, suits, actions, losses, penalties, fines, damages, costs and expenses, including attorneys' fees including the value of legal services if provided by the County Attorney's Office, of any kind or nature whatsoever, due to or

arising out of or from:

- (a) Any breach, violation or nonperformance of any covenant, condition, provision or agreement in this Lease set forth and contained on the part of Tenant to be fulfilled, kept, served and performed, and
- (b) Claims of every kind or nature, arising out of the use and occupancy of the Premises (and/or the alteration, etc. thereof) by Tenant, including without limitation, any damage to property occasioned or arising out of the use and occupancy thereof by Tenant, or any injury to any person, including death resulting at any time therefrom, occurring in or about the Premises, excluding Landlord's gross negligence or willful misconduct.

#### **ARTICLE FIFTEEN** **Inspection and Access**

Section 15.01. Tenant shall permit Landlord and its agents to enter the Premises including the Improvements for the purpose of (i) inspection; and (ii) making repairs that Tenant has neglected or refused to make in accordance with the agreements, terms, covenants and conditions of this Lease upon reasonable advance notice thereof.

Section 15.02. In recognition that Landlord has purchased the Premises from Tenant for transit related purposes that Landlord shall be establishing on the site, Tenant shall also permit Landlord, its agents and such independent contractors as Landlord deems appropriate, to enter the Premises including the Improvements for the purpose of making such inspections, tests, and studies and evaluations as Landlord deems advisable in anticipation of Landlord's ultimate use of the Premises for transit related purposes; provided, however, that Landlord agrees that during the period during any year from November 15 through January 15, Landlord shall not exercise its rights hereinabove if such action would materially interfere with Tenant's parking on the Premises. Landlord agrees to use reasonable efforts to avoid unreasonably interfering with Tenant's occupancy of the Premises during Landlord's inspections, tests, studies and evaluations. Landlord shall promptly repair any damage to the Premises caused by Landlord's investigations, tests, studies and evaluations pursuant to this Section 15.02, subject to Landlord's appropriation thereof.

#### **ARTICLE SIXTEEN** **Damage and Destruction**

Section 16.01. If during the Term the Improvements shall be destroyed or damaged in whole or in part by fire or any other cause, (a "Casualty") except condemnation, and whether or not such destruction or damage is covered by insurance, Tenant shall give to Landlord immediate notice thereof, and Tenant shall promptly and diligently repair, replace and rebuild the same or cause the same to be repaired, replaced or rebuilt, at least to the

conditions thereof immediately prior to such occurrence ("Restoration"). If the damage or destruction is caused by an event for which Tenant is not insured, for whatever reason, Restoration shall be made, at Tenant's sole cost and expense, in accordance with ARTICLE FIVE, provided that Landlord shall not unnecessarily withhold its consent to restoration of the surface parking, if Tenant causes such restoration to be performed in accordance with the standards set forth in herein. Landlord shall in no event be called upon to perform or otherwise be held liable for such Restoration.

Section 16.02. The terms and conditions upon which any Restoration shall be performed by Tenant after any such destruction or damage by fire or any other cause, except by condemnation, and the terms and conditions upon which the proceeds of insurance of the kinds described in ARTICLE NINE shall be applied to the cost of such Restoration are as follows:

- (a) Tenant shall submit to Landlord plans which shall be designed to restore the Improvements thereon to at least the condition immediately prior to such destruction or damage and as completely similar in character as is practicable and reasonable. The plans shall be subject to the reasonable approval of Landlord.
- (b) During such Restoration, Landlord and any architect, engineer or other representative whom Landlord may select to act on its behalf, may inspect all work and materials as rendered and installed during the course of such Restoration and upon completion. Tenant shall keep copies of all plans, and specifications relating to such restoration and permit Landlord or its architect, engineer or other representative to examine them, or, in the alternative, shall furnish Landlord with copies of such plans, and specifications. If during Restoration Landlord, or its architect, engineer or other representative, shall determine that the materials do not substantially conform to the approved plans or that the Restoration is not in accordance with approved plans, prompt notice, in writing, shall be given to Tenant, specifying in detail the particular deficiency, omission or other respect in which it is claimed that the Restoration does not conform with the plans as approved. Upon the receipt of any such notice, Tenant shall take such steps as shall be necessary to cause corrections to be made as to any deficiencies, omissions or otherwise, and, if necessary for the purpose of effectuating such corrections, shall immediately remove such materials, replace such construction and furnish materials in accordance with said plans or with materials equally as good as those provided for in such plans.
- (c) All of such Restoration and the performance thereof shall be subject to and shall be performed in accordance with the provisions of ARTICLE FIVE.
- (d) Upon the completion of the Restoration, a set of the "as restored" plans shall be delivered by Tenant to Landlord.

Section 16.03. If (i) Tenant shall fail to cause required Restoration to be commenced, within thirty (30) days from the date of such damage and destruction in accordance with the provisions of this Lease or such longer time as Landlord may agree in its reasonable discretion if the restoration cannot practicably be commenced within such thirty (30) day period, or, (ii) having commenced such Restoration, Tenant shall fail to complete it in accordance with such provisions with reasonable diligence, and such failure shall continue for a period of thirty (30) days after notice by Landlord to Tenant, Landlord may, at its option after notice to Tenant that it elects so to do, make and complete such Restoration. In such event, and whether or not this Lease may have theretofore been terminated by reason of any default by Tenant, Landlord shall have the right, as the Restoration progresses, to obtain and apply the insurance proceeds to the cost of such Restoration to the extent that they shall not theretofore have been applied to the payment or reimbursement of costs and expenses of Landlord and/or Tenant as aforesaid.

Section 16.04. If prior to the completion of such Restoration, whether by Tenant or Landlord, this Lease shall terminate or expire for any reason, Landlord shall have the right to receive and retain such insurance proceeds to the extent that they shall not theretofore have been applied to the payment or reimbursement of the costs and expenses of Tenant and/or Landlord, as aforesaid.

Section 16.05. This Lease shall not terminate or be affected in any manner by reason of damage to or total, substantial or partial destruction of the Improvements, or by reason of the untenability of the Premises, including the Improvements, or any part thereof, for or due to any reason or cause whatsoever, and Tenant does hereby expressly waive any such right or privilege now granted or created under the provisions of any of the real property laws of the Commonwealth of Virginia or any similar law, rule or regulation now or hereafter in effect relating to the damage or destruction of the Premises, or any part thereof from any cause.

## **ARTICLE SEVENTEEN**

### **Condemnation**

Section 17.01. If, at any time during the Term of this Lease, the whole or substantially all of the Premises shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain, or by agreement between Landlord, Tenant and those authorized to exercise such right, this Lease shall terminate on the date of such taking and the Basic Rent, Additional Rent and other sums of money and other charges herein provided to be paid by Tenant shall be apportioned and paid to the date of such taking.

Section 17.02. If less than substantially all of the Premises shall be taken, this Lease shall be deemed terminated as to the part so taken as of the date of such taking, but with respect to the part not taken shall continue in full force and effect, with a prorata reduction, of the requirement to pay the Basic Rent, Additional Rent and other sums of money and charges herein provided to be paid by Tenant; provided however that if more than fifty

percent (50%) of the surface parking spaces of the Premises shall be taken, Tenant shall have the right either (i) to a proportionate abatement of Basic Rent effective as of the date of the taking, or (ii) to terminate this Lease provided Tenant shall have given written notice thereof to Landlord prior to the effective date of the taking, in which event this Lease shall terminate on the date of such taking and the Basic Rent, Additional Rent and other sums of money and other charges herein provided to be paid by Tenant shall be apportioned and paid to the date of such taking.

Section 17.03. In the event of any taking referred to in Section 17.01 or 17.02, Tenant agrees that the award or awards shall be on the basis that if the taking shall be effective during the first twelve (12) months of the Term of this Lease, the share of the award to Tenant shall be Fifty Percent (50%) of total award; with such award to be reduced by Five Percent (5%) for every twelve month period of the Lease thereafter if a taking should become effective during a subsequent twelve (12) month period. For example, if the taking shall be effective any time during the third twelve (12) month period of the Term, Tenant's share of the award shall be to Forty Percent (40%) of the total award, or if the taking shall be effective any time during the sixth twelve (12) month period of the Term, Tenant's share of the award shall be Twenty Five Percent (25%) of the total award.

Section 17.04. For purposes of this ARTICLE SEVENTEEN, the Premises or a part thereof, as the case may be, shall be deemed to have been taken or condemned on the date on which actual possession of the Premises or a part thereof, as the case may be, is acquired by any lawful power or authority or the date on which title vests therein, whichever is earlier. Any right of entry which may be granted by Landlord or Tenant to any condemning authority shall not affect the date on which the Premises or a part thereof, as the case may be, shall be deemed to have been taken or condemned.

## **ARTICLE EIGHTEEN**

### **No Abatement of Rent**

Section 18.01. No abatement, refund, offset, diminution or reduction of rent, charges or other compensation shall be claimed or allowed to Tenant, or any person claiming under it, under any circumstances, whether for inconvenience, discomfort, interruption of business, or otherwise, arising from the making of alterations, changes, additions, improvements or repairs to the Premises, including the Improvements, or any portion thereof, by virtue or because of any present or future governmental laws, ordinances, or for any other cause or reason, or caused by the matters referred to in ARTICLES SIXTEEN and SEVENTEEN of this Lease. Notwithstanding the foregoing, all rent shall abate commencing on the date of a Casualty that is not caused by the negligence or intentional acts of Tenant or its agents and continue throughout the Restoration until the date on which Tenant is able to use the Premises for temporary parking purposes. For a partial Casualty that is not caused by the negligence or intentional acts of Tenant or its agents, the rent shall be abated prorated based on the usable parking spaces as compared to the total number of spaces on the Premises.

**ARTICLE NINETEEN**  
**Assignment and Subletting**

Section 19.01. Tenant shall not sell, assign or in any manner transfer this Lease or any interest therein or the estate of Tenant hereunder, or rent, sublet, sublease or underlet the Premises as an entirety in a single transaction or a series of related transactions, without the prior written consent of Landlord in each case, which consent may be granted or withheld in the sole and absolute discretion of Landlord; provided, however, that Landlord shall not unreasonably withhold its consent to an assignment of this Lease to persons or entities in which at least fifty percent (50%) of the assignee is owned by Milton V. Peterson and his family.

Section 19.02. If the Improvements or any part thereof be sublet or occupied by anybody other than Tenant in violation hereof, Landlord may, (i) collect rent from any purchaser, assignee, subtenant or occupant and apply the net amount collected to the rent herein reserved and (ii) accept any such purchaser, assignee, subtenant or occupant as tenant, without waiving any rights or remedies of Landlord hereunder.

**ARTICLE TWENTY**  
**Events of Default**

Section 20.01. If any one or more of the following events shall occur:

- (a) Tenant shall desert or abandon the Premises including the Improvements; or
- (b) Tenant shall default in making timely payment to Landlord of any Basic Rent, Additional Rent or of any money advanced by Landlord or otherwise collectible as Additional Rent and such default shall not be cured within ten (10) business days after Tenant's receipt of written notice thereof.
- (c) Tenant shall fail to pay any tax, assessment, water rent, rate or charge, sewer rent or other governmental imposition, or any other charges or lien against the Premises which Tenant is required to pay under this Lease and the same shall not be paid within ten (10) business days after Tenant receives notice of the delinquency; or
- (d) Tenant shall default in complying with any other agreement, term, covenant or condition of this lease and such default in compliance shall continue for a period of fifteen (15) days after notice by Landlord; or
- (e) This Lease or the estate of Tenant hereunder shall be transferred, assigned, or subleased in a nonpermissible transaction (in a single transaction or a series of related transactions) without Landlord's prior written consent;

then an "Event of Default" shall be deemed to have occurred in which case Landlord may thereafter serve a written five (5) day notice of cancellation and termination of this Lease, any other notice to quit required hereunder or by law being expressly waived by Tenant, and upon the expiration of such five (5) days, this Lease and the Term hereunder shall end and expire as fully and completely as if the date of expiration of such five (5) day period were the day herein definitely fixed for the end and expiration of this Lease and the Term hereof, and Tenant shall then quit and surrender to Landlord the Premises, the Improvements and any other improvements on, under or above the Premises, and Landlord may enter into or repossess the same, either by force, summary proceedings or otherwise.

Section 20.02. If this Lease is terminated pursuant to the provisions of Section 20.01 hereof, all of the right, title, estate and interest of Tenant, (i) in and to the Premises, including the Improvements (ii) in and to equipment, fixtures and machinery therein or upon the Premises, and (iii) in and to all revenue, rents, issues and profits thereof whether then accrued or to

accrue, shall terminate and Landlord, without further action on the part of either party and without cost or charge to Landlord, shall have unlimited and sole title thereto and ownership thereof, free of any claim thereto by Tenant.

## **ARTICLE TWENTY-ONE** **Remedies of Landlord**

Section 21.01. If an Event of Default shall have occurred with regard to the payment of any Additional Rent, Landlord may, after the applicable notice, and cure period, if any, to Tenant therefor as set forth in Section 20.01, pay the same for the account and at the expense of Tenant. If Landlord shall incur any expenses, including attorneys' fees including the value of legal services if provided by the County Attorney's Office, in instituting, prosecuting or defending any action or proceeding instituted by reason of any default by Tenant, Tenant shall reimburse Landlord for the amount of such expenses. As provided in Section 7.01, should Tenant, pursuant to this Lease, become obligated to reimburse or otherwise pay Landlord one or more sums of money in addition to Basic Rent, the amount thereof shall be deemed Additional Rent and may, at the option of Landlord, be added to any subsequent installment of Basic Rent due and payable under this Lease, in which event Landlord shall have the additional remedies for default in the payment thereof provided by ARTICLES TWENTY and TWENTY-ONE hereof. The provisions of this Section 21.01 shall survive the termination of this Lease.

Section 21.02. If an Event of Default shall have occurred, in addition to other rights of Landlord hereunder, Landlord shall have the right of injunction to restrain the same and the right to invoke any remedy allowed hereunder by law or in equity, as if specific remedies, indemnity or reimbursement were not herein provided.

Section 21.03. In the event of any termination of this Lease, whether by expiration, forfeiture, cancellation, surrender, operation of law, issuance of a final court order or

otherwise, Landlord may enter the Premises, to remove therefrom Tenant, its agents, employees, licensees and any subleases, persons, firms or corporations and all of their respective property, using such force for that purpose as may be necessary without being liable for prosecution or damages therefor, and thereupon Landlord shall be entitled to retain possession of the Premises with all additions, alterations and improvements thereon and fixtures and appurtenances thereto, free from any interest of Tenant therein.

Section 21.04. If a judgment is entered for the recovery of possession of the Premises and the Improvements in any action or proceeding, Tenant, for itself and for any and all persons claiming through or under Tenant, hereby waives any right of redemption provided or permitted by any statute, law or decision now or hereafter in force, and does hereby waive, surrender and give up all rights or privileges which it or they may or might have, under and by reason of any present or future law or decision, to redeem the Premises or for a continuation of this Lease for the Term hereby demised after having been dispossessed or ejected therefrom by process of law or otherwise.

Section 21.05. No receipt of monies by Landlord from Tenant after the termination hereof in any lawful manner shall reinstate, continue or extend the Term, or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of any Basic Rent and/or Additional Rent then due or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Premises including the Improvements by proper suit, action, proceedings or other remedy; it being agreed that after the service of notice of termination as herein provided and the expiration of the time therein specified, after the commencement of any suit, action, proceedings or other remedy, or after a final order or judgment for possession of the Premises including the Improvements, Landlord may demand, receive and collect any monies due, or thereafter falling due, without in any manner affecting such notice, suit, action, proceedings, order or judgment; and any and all such monies so collected shall be deemed to be payments on account of the use and occupation of the Premises, or, at the election of Landlord, on account of Tenant's liability hereunder. After an Event of Default and Tenant's vacation of Premises, Landlord, at its option, may make such alterations and repairs in or to the Premises including the Improvements as in its judgment Landlord considers advisable and necessary, and the making of such alterations and repairs shall not operate or be construed to release Tenant from liability hereunder. Landlord shall in no event be liable in any way whatsoever for failure to relet the Premises including the Improvements or in the event that the Premises including the Improvements are relet, for failure to collect rent thereof under such reletting; and in no event shall Tenant be entitled to receive any excess of such rents from any such tenant leases over the sums payable by Tenant to Landlord hereunder. Suit or suits for the recovery of such damages, or any installments thereof, may be brought by Landlord from time to time at its election, and nothing herein contained shall be deemed to require Landlord to postpone suit until the date when the Term of this Lease would have expired if it had not been terminated under the provisions of this Lease, or under any provision of law, or had Landlord not re-entered into or upon the Premises.

Section 21.06. The rights and remedies given to Landlord in this Lease are distinct,



separate and cumulative, and no one of them, whether or not exercised by Landlord, shall be deemed to be in exclusion of any of the others herein, or by law or in equity.

## **ARTICLE TWENTY-TWO**

### **No Waiver**

Section 22.01. Waiver by Landlord of any breach by Tenant of any covenant or condition herein contained, or failure by Landlord to exercise any right or remedy in respect of any such breach, shall not constitute a waiver or relinquishment for the future of any such covenant or condition or of any subsequent breach of any such covenant or condition, or bar any right or remedy of Landlord in respect of any such subsequent breach, nor shall the receipt of any rent or portion thereof (regardless of any endorsement on any check or any statement in any letter accompanying any payment of rent) by Landlord, whether the same be reserved and provided for herein as Basic Rent or Additional Rent under any of the covenants or provisions herein contained, operate as an accord and satisfaction or a waiver of the right of Landlord to enforce the payment of rents of any kind previously due or as a bar to the termination of this Lease and the recovery of the Premises because of default in the payment of said rents previously due, by any appropriate remedy Landlord may select.

## **ARTICLE TWENTY-THREE**

### **Notices**

Section 23.01. Whenever it is provided herein that notice, demand, request or other communication shall or may be given to, or served upon, either of the parties by the other, and/or whenever either of the parties shall desire to give or serve upon the other any notice, demand, request or other communication with respect hereto or with respect to the Premises, each such notice, demand, request or other communication shall be in writing and, any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served as follows:

(a) If to Tenant:

The Peterson Companies  
12500 Fair Lakes Circle  
Suite 400  
Fairfax, VA 22033  
Attention: Paul Weinschenk

With a copy to:

Nancy Zabriskie McGrath, Esq.  
c/o The Peterson Companies  
12500 Fair Lakes Circle  
Suite 400

Fairfax, VA 22033

(b) If to Landlord:

Board of Supervisors of Fairfax County  
4050 Legato Road, Suite 400  
Fairfax, Virginia 22033  
Attention:  
Director of Department of Transportation

and

County Attorney's Office  
12000 Government Center Parkway  
Suite 549  
Fairfax, Virginia 22035-0064  
Attention: County Attorney

Every such notice, demand, request or other communication hereunder shall be deemed to have been given or served for all purposes hereunder on the date on which it is received by the party to whom it was sent, by hand delivery, overnight courier, facsimile, certified mail or U.S. mail, postage prepaid. Delivery of notice shall be next business day on overnight deliveries; the delivery date (or attempted delivery date) for hand delivery; three (3) business days if by mail; and the day of facsimile if by facsimile.

#### **ARTICLE TWENTY-FOUR** **Covenant to Yield Possession**

Section 24.01. Except as herein otherwise provided, Tenant shall on the last day of the Term, or upon the sooner termination of the Term, peaceably and quietly surrender and deliver up to Landlord the Premises including the Improvements with all equipment in or appurtenant thereto, together with all fixtures forming a part of, located in, or used in connection with the operation of the Premises including the Improvements, in good condition and repair, depreciation and ordinary wear and tear excepted, without any payment or allowance whatever therefore. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises at any such termination date.

#### **ARTICLE TWENTY-FIVE** **Estoppel Certificates**

Section 25.01. Tenant shall, without charge, from time to time, within fifteen (15) days after request from Landlord, deliver a written instrument to Landlord or any other person or entity specified by Landlord, duly executed and acknowledged, certifying:

- (a) That the Lease is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
- (b) Whether or not there are then existing any setoffs or defenses in favor of Tenant against the enforcement of any of the terms, covenants and conditions of this Lease by Landlord and if so, specifying the same, and also whether or not Landlord has observed and performed all of the terms, covenants and conditions on the part of Landlord or to be observed and performed, and if not, specifying same;
- (c) The dates to which Basic Rent, Additional Rent and all other charges hereunder have been paid; and
- (d) Such other information as Landlord may reasonably request.

Section 25.02. Landlord shall, without charge, from time to time, within fifteen (15) days after request from Tenant, deliver a written instrument to Tenant or any other person or entity specified by Tenant, duly executed and acknowledged, certifying:

- (a) That the Lease is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
- (b) Whether or not there are then existing any setoffs or defenses in favor of Landlord against the enforcement of any of the terms, covenants and conditions of this Lease by Tenant and if so, specifying the same, and also whether or not Tenant has observed and performed all of the terms, covenants and conditions on the part of Tenant or to be observed and performed, and if not, specifying same; and
- (c) The dates to which Basic Rent, Additional Rent and all other charges hereunder have been paid; and
- (d) Such other information as Tenant may reasonably request

## **ARTICLE TWENTY-SIX**

### **Governing Law**

Section 26.01. This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

## **ARTICLE TWENTY-SEVEN**

### **Captions**

Section 27.01. The captions and headings in this Lease are inserted only as a matter of convenience and for reference, and they in no way define, limit or describe the scope of this Lease or the intent of any provision thereof.

## **ARTICLE TWENTY-EIGHT**

### **Successors and Assigns**

Section 28.01. All of the terms, covenants and conditions herein contained shall inure to the benefit of and be binding upon Landlord, its successors and assigns and upon Tenant and the heirs, administrators, executors, legal representatives, successors and assigns of Tenant, and any person who at any time shall be the owner of the leasehold estate hereby created including the Improvements.

## **ARTICLE TWENTY-NINE**

### **Time of the Essence**

Section 29.01. Time is of the essence with regard to each and every term herein to which time is an element.

## **ARTICLE THIRTY**

### **No Commissions**

Section 30.01. Tenant represents to Landlord that no brokerage or leasing commissions or other compensation are due or payable to any person, firm, corporation or other entity with respect to or account of any action taken by or on behalf of Tenant with respect to this Lease.

Section 30.02. Landlord represents to Tenant that no brokerage or leasing commissions or other compensation are due or payable to any person, firm, corporation or other entity with respect to or account of any action taken by or on behalf of Landlord with respect to this Lease.

## **ARTICLE THIRTY-ONE**

### **Integration and Interpretation**

Section 31.01. The terms and conditions herein set forth all the promises, agreements, conditions and understandings between Landlord and Tenant pertaining to leasing of the Premises, and there is no promise, agreement, condition or understanding either oral or written, between the parties other than as are herein set forth. This Lease has been

negotiated at arm's length with both parties having the opportunity to consult with legal counsel with respect to all provisions hereof. In the event of any ambiguity in any of the terms or provisions, this Lease shall not be interpreted against or in favor of either Landlord or Tenant, nor shall there be any presumption against or in favor of either Landlord or Tenant. No prior writings, including without limitation, drafts of this Lease and modifications thereto, shall be given any force or effect.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed as of the date first hereinabove written.

LANDLORD:

BOARD OF SUPERVISORS OF  
FAIRFAX COUNTY, VIRGINIA

By: Anthony H. Griffin  
Its: County Executive

COMMONWEALTH OF VIRGINIA )  
 ) to-wit:  
COUNTY OF FAIRFAX )

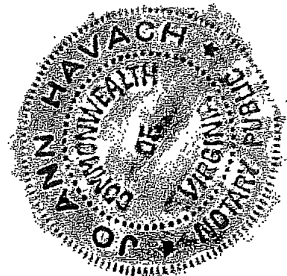
On this 7TH day of MAY, 2009, before me appeared Anthony H. Griffin, the County Executive of the Board of Supervisors of Fairfax County, after being first duly sworn, acknowledged that he/executed the above Lease, and the same was his free act and deed on behalf of the Board of Supervisors of Fairfax County, Virginia, the Landlord hereunder.

Subscribed and sworn before me, a Notary Public, in the county and commonwealth aforesaid on this 7TH day of MAY, 2009.

Jo Ann Havach  
Notary Public

My Commission expires: JULY 31, 2012.

Notary Reg. #178038  
My Commission Expires 7/31/2012



TENANT:

FAIRFAX CORNER MIXED USE, L.C.

By: MVP MANAGEMENT, LLC,  
a Virginia limited liability company  
Its: Manager

By: [Signature]  
Name: Steven B. Peterson  
Its: Manager

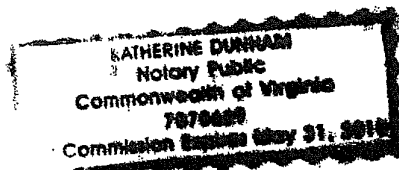
COMMONWEALTH OF VIRGINIA )  
 ) to-wit:  
COUNTY OF FAIRFAX )

On this 13<sup>th</sup> day of May, 2009, before me appeared Steven B. Peterson the Manager of MVP Management, LLC, a Virginia limited liability company, the Manager of Fairfax Corner Mixed Use, L.C., a Virginia limited liability company, after being first duly sworn, acknowledged that he/she executed the above Amended and Restated Lease, and the same was his/her free act and deed on behalf of Fairfax Corner Mixed Use, L.C., the Tenant hereunder.

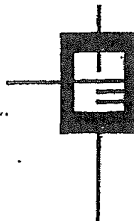
Subscribed and sworn before me, a Notary Public, in the county and commonwealth aforesaid on this 13<sup>th</sup> day of May, 2009.

Katherine Dunham  
Notary Public

My Commission expires: May 31, 2010



**Exhibit "A"**  
Legal Description of the Premises  
Fairfax Corner Land Bay 1



**Urban Engineering & Associates, Inc.**

7712 LITTLE RIVER TURNPIKE  
ANNANDALE, VIRGINIA 22003

Tel: (703) 642-8080  
Fax: (703) 642-8251

J. EDGAR SEARS, JR., P.E., C.L.S., R.L.A.  
Principal  
BARRY R. SMITH, P.E.  
Principal

ERIC S. SEGEL, P.E.  
Principal  
DAVID T. McELHANEY, P.E.  
Principal

PHILLIP A. BLEVINS, L.S.  
Associate  
JEFFREY L. GILLILAND, P.E.  
Associate

EXHIBIT "A"

November 11, 2000

**DESCRIPTION OF  
A PORTION OF THE PROPERTY OF  
FAIRFAX CORNER MIXED USE, L.C.  
PROPOSED PARCEL "C"**

Beginning at a point on the southerly right-of-way of Random Hills Road, Route 656, width varies; said point being the northeasterly corner of the property of Fairfax County Board of Supervisors as recorded in Deed Book 5284 at Page 85 among the land records of Fairfax County, Virginia; thence running with said Random Hills Road.

North 76° 21' 31" East, 82.67 feet to a point; thence departing said Random Hills Road and running

North 86° 01' 31" East, 43.34 feet to a point; thence

North 80° 56' 59" East, 200.61 feet to a point; thence

66.32 feet along the arc of a curve deflecting to the right have a radius of 42.00 feet and a chord bearing and distance of South 53° 48' 38" East, 59.64 feet to a point; thence

405.75 feet along the arc of a curve deflecting to the right having a radius of 532.00 feet and a chord bearing and distance of South 13° 16' 43" West, 395.99 feet to a point; thence

South 35° 00' 14" West, 23.01 feet to a point; thence

65.97 feet along the arc of a curve deflecting to the right having a radius of 42.00 feet and a chord bearing and distance of South 80° 00' 10" West, 59.40 feet to a point on the northerly right-of-way of Monument Drive, Route 6751, width varies; thence running with said Monument Drive

North 54° 59' 46" West, 158.85 feet to a point, said point being the southeasterly corner of said Fairfax County Board of Supervisors; thence departing said Monument Drive and running with said Fairfax County Board of Supervisors.

North 14° 11' 54" West, 314.20 feet to the point of beginning, containing 123,130 square feet or 2.82668 acres, more or less.

R:\PHIL\Parcel\CD\ES\wpd.wpd

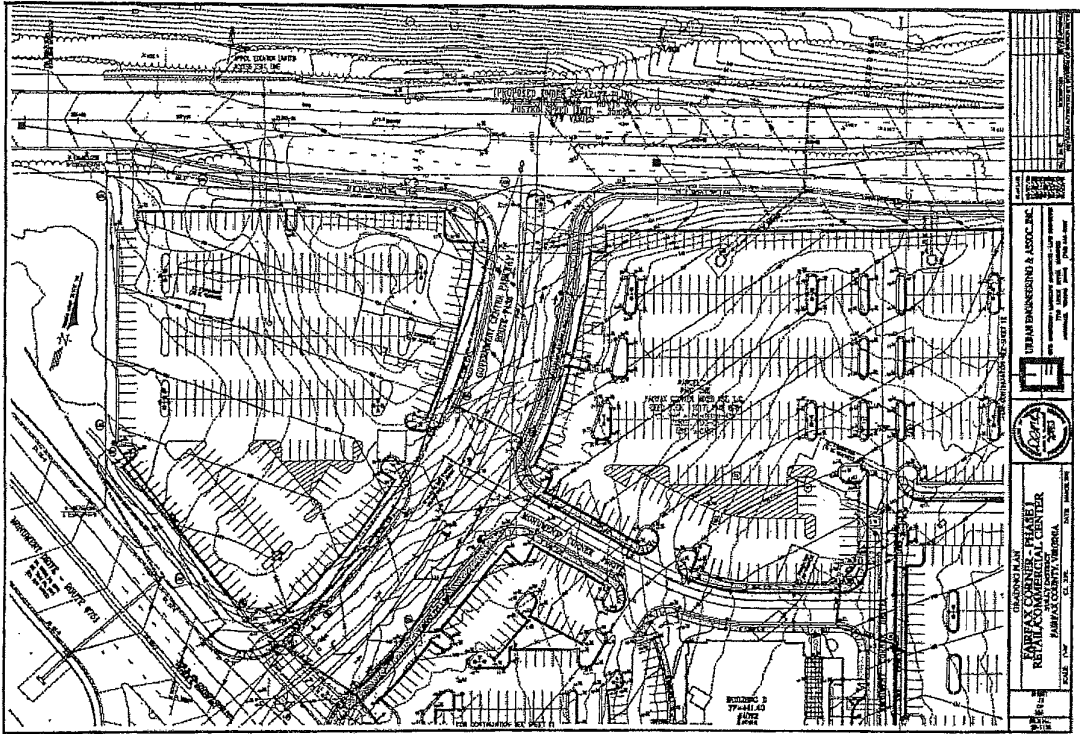
ENGINEERS • PLANNERS • LANDSCAPE ARCHITECTS • SURVEYORS

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**Exhibit "A"**  
Page 1 of 1

**Exhibit "B"**

**Design of Paved Parking Lot located on the Premises**



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INFORMATION – 1

Contract Award – Consulting and Related Software and Systems Support for Development and Maintenance of a Northern Virginia NG9-1-1 Spatial Interface Dataset

The Department of Public Safety Communications (DPSC), in coordination with Northern Virginia (NoVA) Public Safety Answering Points (PSAPs), received proposals for consulting and related software and systems support to develop a National Capital Region (NCR) GIS dataset, starting with GIS data from Northern Virginia jurisdictions, for use in a National Emergency Number Association (NENA) Next Generation 9-1-1 system (NG9-1-1) solution.

The project will include implementation of a proof of concept pilot that will assist with the long term planning and development of a Geographic Information Systems (GIS) solution tailored to meet the GIS data demands of a National Emergency Number Association (NENA) Next Generation 9-1-1 system. The proof of concept (POC) involves the NoVA jurisdictions using the recently completed GIS synchronization work products from the NG9-1-1 Regional Study and developing, in a collaborative effort with contractor assistance and advice through structured work and review sessions, changes to GIS data in the jurisdiction that will support a NG9-1-1 data model. The consultant will support local jurisdiction analysis of improved GIS data and business process workflows for the NG9-1-1 standardization and will support jurisdictions in the use of data maintenance and vendor provided tools.

Preparation of a NoVA GIS dataset will involve aggregating local authoritative GIS datasets from the City of Alexandria and the counties of Stafford, Arlington, Fairfax, Loudon, Prince William, and Fauquier County. This POC effort is a preliminary preparatory step toward a functioning NG9-1-1 system for the NCR. The procurement of a regional ECRF and LVF and associated functional elements is anticipated to be provided under a future separate contract.

In accordance with the County's policy on the use of General Services Administration (GSA) Multiple Award Schedules, the Department of Purchasing and Supply Management solicited offers from four qualified GSA contractors. The County received three proposals in response to the solicitation. DPSC staff evaluated the proposals in accordance with the criteria established in the GSA solicitation request, and upon completion of the final evaluation and negotiations, DPSC staff recommended contract award to General Dynamics Information Technology, Inc. (GDIT).

Board Agenda Item  
January, 12, 2016

The Fairfax County Department of Tax Administration has verified that General Dynamics Information Technology, Inc. (GDIT) has a Fairfax County Business, Professional & Occupational License (BPOL).

Unless otherwise directed by the Board of Supervisors, the County Purchasing Agent will execute a contract award to General Dynamics Information Technology, Inc. for Consulting and Related Software and Systems Support for Development and Maintenance of a Northern Virginia NG9-1-1 Spatial Interface Dataset.

FISCAL IMPACT:

Grant funding in the amount of \$499,999.98 is available in the Virginia E-911 Services Board grant funds through the Commonwealth of Virginia. This action does not increase the expenditure level in the Federal-State Grant Fund, as funds are held in reserve for Homeland Security grant awards received in FY 2016. Indirect costs are recoverable for some of these awards. No Local Cash Match is required.

These funds are made available by the Virginia Information Technology Agency (VITA) a competitive grant award program that supports Public Safety Answering Points (PSAPs). The Board of Supervisors previously approved receiving the funding from VITA that will support funding this consulting contract (BOS Meeting July 28, 2015 – Administrative Item Supplemental Appropriation Resolution AS 16025 for the Department of Public Safety Communications to Accept Grant Funding from the Commonwealth of Virginia E-911 Services Board). The grant period for the FY 2016 grant awards is 24 months retroactive from July 1, 2015 through June 30, 2017. No Local Cash Match is required.

ENCLOSED DOCUMENTS:

Attachment 1 – List of Offerors

STAFF:

Cathy A. Muse, Director, Department of Purchasing and Supply Management  
David Rohrer, Deputy County Executive  
Wanda Gibson, Director, Department of Information Technology  
Steve Souder, Director, Department of Public Safety Communications

ATTACHMENT 1

List of Offerors

NAME	SWAM STATUS
GeoComm, Inc.	Small Business
General Dynamics Information Technology, Inc.	Large Business
The Goal, Inc.	Minority-Owned Small Business

INFORMATION – 2

Planning Commission Action on Application 2232-V15-I, Huntington Levee

On Thursday, December 3, 2015, the Planning Commission voted 11-0 (Commissioner Hedetniemi was absent from the meeting) to approve 2232-V15-I.

The Commission noted that the application met the criteria of character, location, and extent, and was in conformance with Section 15.2-2232 of the Code of Virginia and is substantially in accord with the provisions of the adopted Comprehensive Plan.

Application 2232-V15-I sought approval to construct the Huntington Levee and Stormwater Pump Station, generally located at 2219 Fairfax Terrace, Alexandria, VA 22303.

ENCLOSED DOCUMENTS:

Attachment 1: Verbatim excerpt

Attachment 2: Vicinity map

STAFF:

Robert A. Stalzer, Deputy County Executive

James Patteson, Director, Department of Public Works and Environmental Services (DPWES)

Fred R. Selden, Director, Department of Planning and Zoning (DPZ)

Chris Caperton, Public Facilities Branch Chief, Planning Division, DPZ

Jill Cooper, Executive Director, Planning Commission Office

2232-V15-1 – FAIRFAX COUNTY DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES

After Close of the Public Hearing

Chairman Murphy: Public hearing is closed, Mr. Flanagan.

Commissioner Flanagan: Thank you, Mr. Chairman. This project has been a long time coming and I appreciate Commissioner Ulfelder's concerns about the Park Authority and their ability to take care of themselves and the – the – VDOT has not been – been in contact with them to on this project and I think that they are pretty hard people to deal with usually so, with that I'd like to just CONCUR WITH THE STAFF'S CONCLUSION THAT THE PROPOSAL BY THE FAIRFAX COUNTY DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES FOR THE CONSTRUCTION OF THE HUNTINGTON LEVEE AND STORMWATER PUMP STATION, GENERALLY LOCATED AT 2219 FAIRFAX TERRACE, ALEXANDRIA, SATISFIES THE CRITERIA OF LOCATION, CHARACTER AND EXTENT AS SPECIFIED IN *VIRGINIA CODE* SECTION 15.2-2232, AS AMENDED. THEREFORE, MR. CHAIRMAN, I MOVE THAT THE PLANNING COMMISSION FIND THE SUBJECT APPLICATION, 2232-V15-1, SUBSTANTIALLY IN ACCORD WITH THE PROVISIONS OF THE ADOPTED COMPREHENSIVE PLAN.

Commissioner Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Litzenberger. Is there a discussion of the motion? All those in favor of the motion to approve 2232-V15-1, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

//

(The motion carried by a vote of 11-0. Commissioner Hedetniemi was absent from the meeting.)

TMW

# PLANNING DETERMINATION

Section 15.2 -2232 of the Code of Virginia



**Number:** 2232-V15-1

**Acreage:** N/A

**District:** Mount Vernon

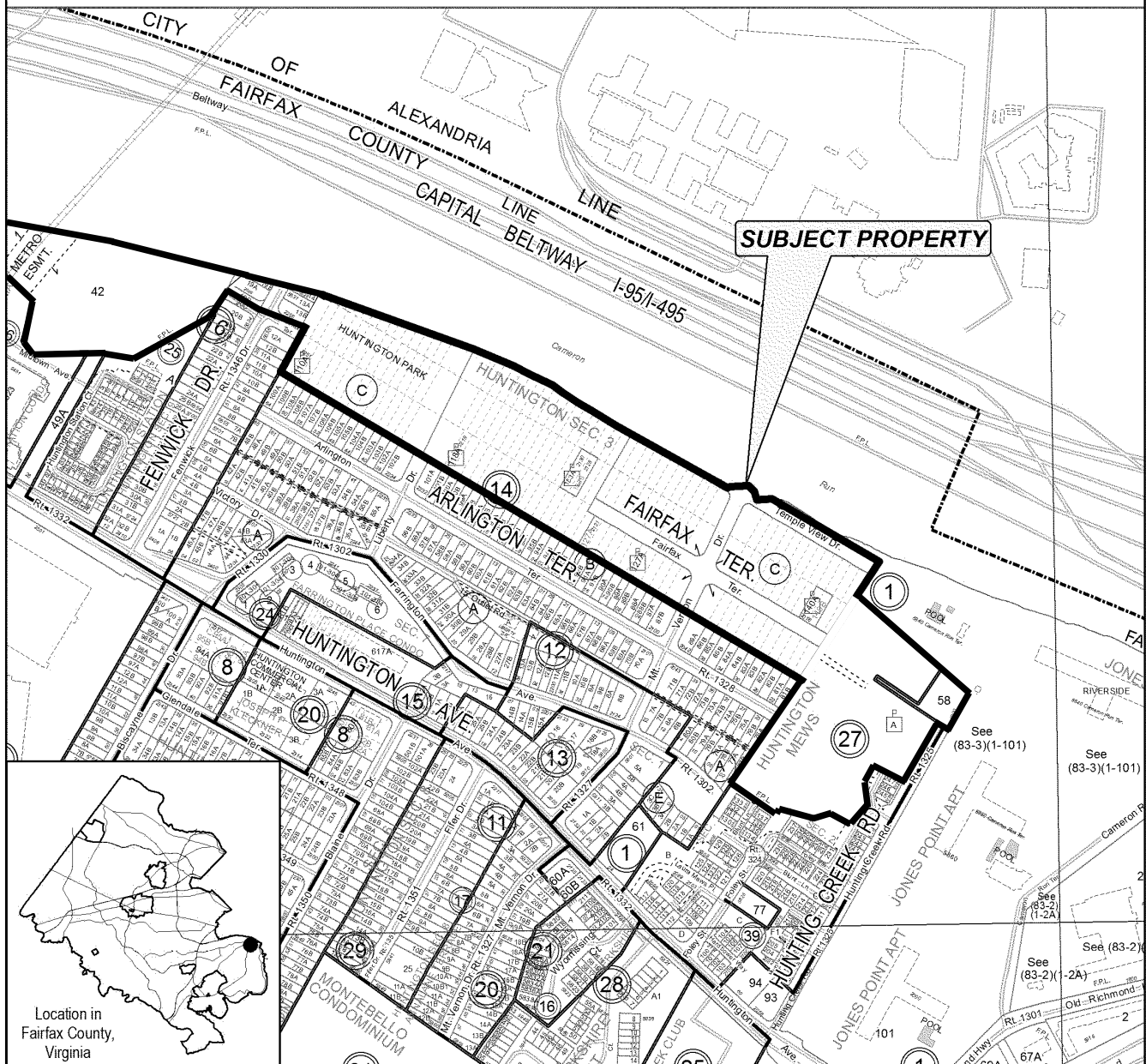
**Tax Map ID Number:** 83-1 ((14)) (C) 110A, 118A, 127A, 140A & 153A; 83-1 ((16)) 13A, 13B, 14B, 19A, 19B, 19C, 20B, 20C; 83-1 ((27)) A; 83-1 ((01)) 42; 83-1 ((01)) 58

**Address:** Generally located in Huntington Park, Alexandria, VA, 22303

**Planned Use:** Public Park

**Applicant:** Fairfax County Department of Public Works and Environmental Services

**Proposed Use:** Levee for Flood Protection



Location in  
Fairfax County,  
Virginia

500 FEET

PREPARED BY THE DEPARTMENT OF PLANNING AND ZONING  
USING FAIRFAX COUNTY GIS



Board Agenda Item  
January 12, 2016

11:00 a.m.

Matters Presented by Board Members

11:50 a.m.

CLOSED SESSION:

- (a) Discussion or consideration of personnel matters pursuant to Virginia Code § 2.2-3711(A) (1).
  - (b) Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body, pursuant to Virginia Code § 2.2-3711(A) (3).
  - (c) Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, and consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel pursuant to Virginia Code § 2.2-3711(A) (7).
- 
- 1. *Eric S. Clark v. The County of Fairfax, Virginia, John H. Kim, T. B. Smith, and John Spata*, Case No. 15-1705 (U.S. Ct. of App. for the Fourth Cir.)
  - 2. *Ian Smith v. Major Thomas Ryan, Lance Guckenberger and John Doe II*, Record No. 151278 (Va. Sup. Ct.)
  - 3. *Gary S. Pisner v. Fairfax County Board of Zoning Appeals*, Record No. 151793 (Va. Sup. Ct.) (Springfield District)
  - 4. *Gregory Shawn Mercer v. Fairfax County Child Protective Services, Alicia Wasklewics, Tanya E. Powers, Fairfax County Department of Code Compliance, Elizabeth Perry, Jack Blair, LaTycia Tanks, Kerry S. Allander, Kenneth S. Houtz, Kathleen H. MacKay, Walter S. Felton, Jr., Larry G. Elder, Elizabeth A. McClanahan, Leroy R. Hassell, Sr., Barbara M. Keenan, Lawrence L. Koontz, Donald W. Lemons, Leroy F. Millette, S. Bernard Goodwyn, and Cynthia D. Kinser*, Case No. 1:15-CV-302 (E.D. Va.) (Providence District)
  - 5. *Gregory Shawn Mercer v. Fairfax County Department of Code Compliance*, Record No. 195415 (Va. Ct. App.) (Providence District)
  - 6. *David J. Laux and Tara K. Laux a/k/a Tara K. Long v. Board of Supervisors of Fairfax County, James W. Patteson, Director, Fairfax County Department of Public Works and Environmental Services, and the Commonwealth of Virginia*, Civil Action No. 15cv1334 (E.D. Va.) (Mason District)
  - 7. *James W. Patteson, Director, Fairfax County Department of Public Works and Environmental Services, and Brian J. Foley, Fairfax County Building Official v. David J. Laux and Tara K. Laux, a/k/a Tara K. Long*, Case No. CL-2015-0007970 (Fx. Co. Cir. Ct.) (Mason District)



8. *Hye Shin Kolk v. Ali Abdul Austin, Rapid Response Delivery, Inc., Penske Truck Leasing Corporation, Marques L. Lowry*, Case No. CL-2014-0015585 (Fx. Co. Cir. Ct.)
9. *In Re: April 15, 2015, Decision Of The Fairfax County Board of Zoning Appeals In BZA Appeal No. A 2012-HM-020*, Case No. CL-2015-0006478 (Fx. Co. Cir. Ct.) (Hunter Mill District)
10. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Joyce P. Borden*, Case No. CL-2014-0008508 (Fx. Co. Cir. Ct.) (Mount Vernon District)
11. *Leslie B. Johnson, Fairfax County Zoning Administrator v. John Hicks, Betty Pearson-Pavone, Dallas Hicks, Harold E. Pearson, Alice Hicks, and Edward Hicks*, Case No. CL-2012-0013536 (Fx. Co. Cir. Ct.) (Providence District)
12. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. John Hicks, Betty Pearson-Pavone, Dallas Hicks, Harold E. Pearson, Alice Hicks, and Edward Hicks*, Case No. CL-2014-0011059 (Fx. Co. Cir. Ct.) (Providence District)
13. *Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Ted J. Fares*, Case No. CL-2013-0019056 (Fx. Co. Cir. Ct.) (Mason District)
14. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Robinson Socrates Nunn and Glanetta Miller*, Case No. CL-2015-0003878 (Fx. Co. Cir. Ct.) (Hunter Mill District)
15. *Eileen M. McLane, Fairfax County Zoning Administrator v. Ross Spagnolo*, Case No. CL-2011-0005847 (Fx. Co. Cir. Ct.) (Providence District)
16. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Rama Sanyasi Rao Prayaga and Niraja Dorbala Prayaga*, Case No. CL-2012-0019078 (Fx. Co. Cir. Ct.) (Dranesville District)
17. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Rama Sanyasi Rao Prayaga and Niraja Dorbala Prayaga*, Case No. CL-2010-0002573 (Fx. Co. Cir. Ct.) (Dranesville District)
18. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Steven C. Bryant*, Case No. CL-2009-0005546 (Fx. Co. Cir. Ct.) (Sully District)

19. *Leslie B. Johnson, Fairfax County Zoning Administrator v. John L. Butterfield and Nancy S. Butterfield*, Case No. CL-2014-0010617 (Fx. Co. Cir. Ct.) (Dranesville District)
20. *Board of Supervisors of Fairfax County, Virginia v. Fairfax Professional Center, L.P.*, Case Nos. CL-2010-0013857 and CL-2012-0005453 (Fx. Co. Cir. Ct.) (Providence District)
21. *Board of Supervisors of Fairfax County, Virginia v. Four Seasons Tennis Club of Merrifield, Limited Partnership*, Case Nos. CL-2010-0013854 and CL-2012-0005454 (Fx. Co. Cir. Ct.) (Providence District)
22. *Board of Supervisors of Fairfax County, Virginia v. Hughes and Smith, Inc.*, Case Nos. CL-2010-0013855 and CL-2012-0005451 (Fx. Co. Cir. Ct.) (Providence District)
23. *Leslie B. Johnson, Fairfax County Zoning Administrator v. BX Auto Center, LLC*, Case No. CL-2015-00009727 (Fx. Co. Cir. Ct.) (Mason District)
24. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Angelo Alfaro, Sr., and Anna Maria Alfaro*, Case No. CL-2015-0003502 (Fx. Co. Cir. Ct.) (Springfield District)
25. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Dewey L. Newman and Bobbie R. Newman*, Case No. CL 2015-0010812 (Fx. Co. Cir. Ct.) (Hunter Mill District)
26. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Romulo Castro and Blanca B. Castro*, Case No. CL-2015-0013768 (Fx. Co. Cir. Ct.) (Providence District)
27. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Charles Yeh and Mary Yeh*, Case No. CL-2015-0010512 (Fx. Co. Cir. Ct.) (Dranesville District)
28. *Board of Supervisors of Fairfax County, Virginia, and James W. Patteson, Director, Fairfax County Department of Public Works and Environmental Services v. Mary C. Muldoon and Michael G. Muldoon*; Case No. CL-2015-0010655 (Fx. Co. Cir. Ct.) (Springfield District)
29. *Sheila E. Frace, Trustee v. John F. Ribble, III*, Case No. CL-2013-0017108); *Leslie B. Johnson v. Sheila E. Frace, Trustee*, Case No. CL-2014-0000128 (Fx. Co. Cir. Ct.) (Dranesville District)

30. *WM Recycle America, L.L.C. v. Fairfax County, Virginia Department of Purchasing and Supply Management*, Case No. CL-2015-0015820 (Fx. Co. Cir. Ct.)
31. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Dean Chuang Huang*, Case No. CL-2015-0001477 (Fx. Co. Cir. Ct.) (Dranesville District)
32. *Board of Supervisors of Fairfax County, Virginia, and James W. Patteson, Director, Fairfax County Department of Public Works and Environmental Services v. Robert B. Allocca*, Case No. CL-2015-0013008 (Fx. Co. Cir. Ct.) (Providence District)
33. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Robert B. Allocca*, Case No. CL-2015-0016056 (Fx. Co. Cir. Ct.) (Providence District)
34. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Michael Ryabinky and Eugenia Ryabinky*, Case No. CL-2015-0017544 (Fx. Co. Cir. Ct.) (Mason District)
35. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Gulam J. Irfani, a/k/a Ghulam J. Irfani, and Syed Shah Salahuddin*, Case No. GV15-026108 (Fx. Co. Gen. Dist. Ct.) (Lee District)
36. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Gulam J. Irfani, a/k/a Ghulam J. Irfani, and Syed Shah Salahuddin*, Case No. GV15-026109 (Fx. Co. Gen. Dist. Ct.) (Lee District)
37. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Gregory I. Witherow and Ellen R. Witherow*, Case No. GV15-026107 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)
38. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Edwin Rocha and Hilda Rocha and Jorge Alfredo Veron*, Case No. GV15-026063 (Fx. Co. Gen. Dist. Ct.) (Lee District)
39. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Mahmud Rashid*, Case No. GV15-018997 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)
40. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Roberto E. Portillo, Maria E. Portillo, Carlos R. Portillo, and Alfredo R. Portillo*, Case No. GV15-026452 (Fx. Co. Gen. Dist. Ct.) (Mason District)
41. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Flor Barreda*, Case Nos. GV15-007102 and GV15-026640 (Fx. Co. Gen. Dist. Ct.) (Mason District)

42. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Gregory Miklasiewicz*, Case Nos. GV15-028913 and GV15-028914 (Fx. Co. Gen. Dist. Ct.) (Braddock District)

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Board Agenda Item  
January 12, 2016

3:00 p.m.

Annual Meeting of the Fairfax County Solid Waste Authority

ISSUE:

Fairfax County Solid Waste Authority annual meeting.

RECOMMENDATION:

The County Executive recommends that the Fairfax County Solid Waste Authority hold its annual meeting in accordance with the Bylaws for the Authority; appoint officers; approve the minutes of the last annual meeting on January 27, 2015; and review the financial statements.

TIMING:

Immediate. The Bylaws of the Fairfax County Solid Waste Authority require the annual meeting to coincide with the time for the last regular meeting of the Board of Supervisors set in January.

BACKGROUND:

According to the Bylaws of the Fairfax County Solid Waste Authority, the regular annual meeting of the Authority shall coincide with the time for the last regular meeting of the Board of Supervisors set in January. The proposed agenda of the Authority meeting is included as Attachment I. The Bylaws further require a review and approval of the minutes of the previous year's meetings (Attachment II) and that officers of the authority be appointed to serve for a one-year term.

During FY 2015, the I-95 Energy/Resource Recovery Facility (E/RRF) processed 99,659 tons of municipal solid waste, over 7% above the Guaranteed Annual Tonnage (GAT) of 930,750 tons required by the Service Agreement with Covanta Fairfax, Inc. (CFI), owner and operator of the facility. County waste delivered to the facility totaled 593,851 tons. This was below the GAT level but additional waste from the District of Columbia, Prince William County, and supplemental waste accounted for the remaining tons. Solid waste disposal is down overall due to the economy, increased recycling, and reduced generation of waste (e.g. less packaging).

The June 2015 stack test and twice-yearly ash tests documented emissions from the E/RRF that were well below regulatory and permit limits established by the

Board Agenda Item  
January 12, 2016

U.S. Environmental Protection Agency (EPA) and the Virginia Department of Environmental Quality. The report from the independent engineering firm of Dvirka and Bartilucci confirmed in its October 2015 report, page 1-2, that “CFI has complied with the requirements of the Service Agreement, as amended, and has complied with the Facility’s various environmental permit and regulatory obligations.” Covanta Fairfax continues to be certified as a Virginia Extraordinary Environmental Excellence Enterprise Program (E4) participant.

The construction bonds for the facility were paid in February 2011, with a resultant reduction in the tip fee paid by the county to Covanta. The related Service Agreement extension continues through February 1, 2016. A new Waste Disposal Agreement (WDA), awarded to Covanta Fairfax in April 2014, begins then. Changes to the relationship with Covanta will be minimal. Covanta will operate the weigh scales. This contract extends the county’s use of the facility from February 2016 through at least February 2021, with a lower annual guarantee of tons and below market rates for disposal. The contract term is for 5 years with two possible 5-year extensions. Other WDA benefits that will accrue to the county over the period of the contract include payment for certain county infrastructure costs at the Landfill Complex, priority disposal at the facility, and an ash disposal agreement for the landfill.

Payment for Covanta tip fees will continue to come from charges to County customers for waste disposal. Additional financial information is contained in the Financial Statements (Attachment III).

FISCAL IMPACT:  
None

ENCLOSED DOCUMENTS:

Attachment I – Fairfax County Solid Waste Authority Meeting Agenda, January 12, 2016  
Attachment II – Minutes of the January 27, 2015, Solid Waste Authority Annual Meeting  
Attachment III – Financial Statements

STAFF:

James W. Patteson, Director, Department of Public Works and Environmental Services (DPWES)  
John W. Kellas, Deputy Director, DPWES, Solid Waste Management Program

**FAIRFAX COUNTY SOLID WASTE AUTHORITY**

**Annual Meeting Agenda**

**January 12, 2016**

1. Call-to-Order
2. Appointment of Officers.
  - Chairman
    - Sharon Bulova, Chairman  
Fairfax County Board of Supervisors
  - Vice-Chairman
    - Penelope A. Gross, Vice-Chairman  
Fairfax County Board of Supervisors
  - Secretary
    - Catherine A. Chianese, Clerk to the  
Fairfax County Board of Supervisors
  - Treasurer
    - Christopher Pietsch, Director  
Department of Finance
  - Attorney
    - David P. Bobzien, County Attorney
  - Executive Director
    - Edward L. Long Jr., County Executive
  - Authority Representative
    - John W. Kellas, Deputy Director  
Department of Public Works and Environmental  
Services, Solid Waste Management Program
3. Approval of the minutes from the January 27, 2015 meeting.
4. Approval of the financial statements for the Authority.

**MINUTES OF THE ANNUAL MEETING OF THE SOLID WASTE AUTHORITY**

**January 27, 2015**

At the Annual Meeting of the Fairfax County Solid Waste Authority held in accordance with Article III, Section I of the bylaws, in the Board Auditorium of the Government Center in Fairfax, Virginia, on Tuesday, January 27, 2015, at 3:51 p.m., there were present:

**MEMBERS OF THE BOARD OF DIRECTORS AND OFFICERS:**

Chairman Sharon Bulova, presiding

Supervisor John C. Cook, of Braddock District

Supervisor John W. Foust, of Dranesville District

Supervisor Michael R. Frey, of Sully District

Supervisor Penelope A. Gross, of Mason District

Supervisor Catherine M. Hudgins, of Hunter Mill District

Supervisor Gerald W. Hyland, of Mount Vernon District

Supervisor Jeffrey C. McKay, of Lee District

Supervisor Patrick S. Herrity, of Springfield District

Supervisor Linda Q. Smyth, of Providence District

Edward L. Long Jr., County Executive; Authority Executive Director

Catherine A. Chianese, Clerk of the Board of Supervisors; Authority Secretary

Christopher Pietsch, Director, Department of Finance; Treasurer

David P. Bobzien, County Attorney; Authority Attorney

John Kellas, Director, Solid Waste Management Program Operations Division, Department of Public Works and Environmental Services (DPWES); Authority Representative



**Meeting Minutes  
The Fairfax County Solid Waste Authority  
January 27, 2015**

Supervisor Hyland moved that the Board appoint the following officers and officials to the Fairfax County Solid Waste Authority:

**OFFICERS**

Sharon Bulova Chairman, Fairfax County Board of Supervisors	– Chairman
Penelope A. Gross Vice-Chairman, Fairfax County Board of Supervisors	– Vice-Chairman
Catherine A. Chianese Clerk of the Fairfax County Board of Supervisors	– Secretary
Christopher Pietsch Director, Office of Finance	– Treasurer
David P. Bobzien County Attorney	– Attorney
Edward L. Long Jr. County Executive	– Executive Director
John Kellas Director, Solid Waste Management Program Operations Division, Department of Public Works and Environmental Services (DPWES)	– Authority Representative

Supervisor Gross seconded the motion and it carried by unanimous vote.

Supervisor Gross moved approval of the minutes from the January 28, 2014, meeting of the Fairfax County Solid Waste Authority. Supervisor Hyland seconded the motion and it carried by unanimous vote.

Supervisor Gross moved approval of the financial statements for the Authority. Supervisor Hyland seconded the motion and it carried by unanimous vote.

**Meeting Minutes**  
**The Fairfax County Solid Waste Authority**  
**January 27, 2015**

Supervisor Gross moved to adjourn the Annual Meeting of the Fairfax County Solid Waste Authority. Supervisor Hyland seconded the motion and it carried by unanimous vote.

At 3:53 p.m., the Annual Meeting of the Fairfax County Solid Waste Authority was adjourned.

**Meeting Minutes  
The Fairfax County Solid Waste Authority  
January 27, 2015**

The foregoing minutes record the actions taken by the Fairfax County Solid Waste Authority at its meeting held on Tuesday, January 27, 2015, and reflects matters discussed by the Authority. Audio or video recordings of all proceedings are available in the Office of the Clerk of the Board of Supervisors of Fairfax County, Virginia.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Catherine A. Chianese", written over a horizontal line.

Catherine A. Chianese, Secretary  
Solid Waste Authority

**FAIRFAX COUNTY SOLID WASTE AUTHORITY**

Fiduciary Report

June 30, 2015 and 2014

**FAIRFAX COUNTY SOLID WASTE AUTHORITY**

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# FAIRFAX COUNTY SOLID WASTE AUTHORITY

## Statements of Fiduciary Assets and Liabilities

June 30, 2015 and 2014

	<u>2015</u>	<u>2014</u>
<b>Assets:</b>		
Investments	<u>\$ -</u>	<u>\$ -</u>
<b>Liabilities:</b>		
Liability under reimbursement agreement	<u>\$ -</u>	<u>\$ -</u>

*See accompanying notes to fiduciary report*

# FAIRFAX COUNTY SOLID WASTE AUTHORITY

## Notes to Fiduciary Report

June 30, 2015 and 2014

### 1. Organization

The Fairfax County Solid Waste Authority (the Authority) was formed by resolution of the Board of Supervisors of the County of Fairfax, Virginia (the County), on July 27, 1987. The Authority's board consists of the County's Board of Supervisors. Therefore, the Authority is considered a blended component unit of the County.

The Authority was formed for the purpose of constructing and overseeing the operations of a resource recovery facility (the Facility) in Lorton, Virginia, on a site that was purchased in July 2002 by the County from the United States. Prior thereto, legal title to the site was vested in the United States to the benefit of the District of Columbia; the site was leased by the District to the County, and the County assigned the leased site to the Authority. The Assignment of Site Lease to the Authority, dated as of February 1, 1988, has not been amended, terminated, rescinded, or revoked, and remains in full force and effect in accordance with its terms.

The construction of the Facility was partially financed by \$237,180,000 and \$14,900,000 of Series 1988A tax-exempt and Series 1988B taxable industrial revenue bonds, respectively, issued by the Fairfax County Economic Development Authority (EDA) during 1988. The Series 1988B Bonds were retired in February 1996. The Authority invests all bond proceeds through a trust account with a major bank. The Authority is responsible for making all investment decisions and authorizing all disbursements from the trust.

On February 1, 1988, an Installment Sales Agreement between the EDA and the Authority was executed whereby the Facility and the bond proceeds were sold to the Authority. Concurrent with this Installment Sales Agreement, the Authority entered into a Conditional Sale Agreement whereby the Facility, the bond proceeds and the Authority's leasehold interest in the site were sold to Covanta Fairfax, Inc. Under a related service agreement, Covanta designed, constructed, and operates the Facility. The Facility was completed and began commercial operations in June 1990. The County and the Authority have agreed to provide guaranteed minimum annual amounts of waste and annual tipping fees to the Facility. Under the terms of the Conditional Sale Agreement, debt service on the bonds was paid by Covanta through the Authority solely from solid waste system revenues generated by the Facility. The bonds were not general obligations of the Authority, the County, or the EDA.

During the fiscal year ended June 30, 1995, the EDA sold, at the request of the Authority for the benefit of the Facility, a call option on the Series 1988A Bonds to a financial institution for \$10,250,000. The option, which was exercised in November 1998, required the EDA to issue new bonds to the institution at certain agreed-upon interest rates. The proceeds of the new Series 1998A Resource Recovery Revenue Refunding Bonds together with certain proceeds remaining from the Series 1988A Bonds and certain other available funds were used to refund the remaining outstanding Series 1988A Bonds in February 1999. The final principal and interest payments on the Series 1998A Resource Recovery Revenue Refunding Bonds were made on February 1, 2011. The bank accounts held with the fiscal agent, US Bank, to service the debt payments and invest the debt service reserve were closed in FY2011. As a result, there were no fiduciary assets, obligations, or transactions to record or report in FY2015.

Board Agenda Item  
January 12, 2016

3:00 p.m.

Public Hearing on SEA 83-V-083 (SEJ Asset Management and Investment Company) to Amend SE 83-V-083 Previously Approved for a Service Station and Quick Service Food Store to Permit Modifications to Site Design and Development Conditions and to Permit Modifications to Minimum Yard Requirements for Certain Existing Structures and Uses, Located on Approximately 30,856 Square Feet of Land Zoned C-8 (Mount Vernon District)

This property is located at 9402 Richmond Highway, Lorton 22079. Tax Map 107-4 ((1)) 22 and 23.

This public hearing was deferred to January 12, 2016 by the Board of Supervisors at the October 20, 2015 meeting.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, October 15, 2015, the Planning Commission voted 5-4-3 (Commissioners Hart, Hedetniemi, Hurley, and Ulfelder opposed the motion and Commissioners Lawrence, Murphy, and Strandlie were absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of SEA 83-V-083, subject to the Development Conditions dated October 14, 2015, with the following changes:

Condition 6 shall be replaced as follows:

"Notwithstanding the improvements shown on the SEA Plat, the applicant may continue use of the Armistead Road access point in a manner acceptable to VDOT. Improvements to the Armistead Road access point, such as those required as a result of an Access Management Exception Review, shall be subject to the review and approval of VDOT and shall be incorporated into the applicant's site plan submission prior to final site plan approval."

- Approval of a modification of the minimum rear yard requirement for the existing service station/quick service food store building in accordance with Section 9-625 of the Zoning Ordinance to permit the building to remain as shown on the SEA Plat;



Board Agenda Item  
January 12, 2016

- Approval of a modification of the frontage improvements requirement found in Section 17-201 of the Zoning Ordinance in favor of that shown on the SEA Plat; and
- Approval of a waiver of the transitional screening and barrier requirements in Section 13-302 of the Zoning Ordinance along the western property boundary.

ENCLOSED DOCUMENTS:

Attachment 1: Planning Commission Verbatim Excerpt  
Staff Report previously furnished and available online at:  
<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4502651.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)  
Nick Rogers, Planner, DPZ

SEA 83-V-083 – SEJ ASSET MANAGEMENT AND INVESTMENT COMPANY

Decision Only During Commission Matters

Commissioner Flanagan: I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE SEA 83-V-083, SUBJECT TO THE DEVELOPMENT CONDITIONS DATED OCTOBER 14, 2015, WITH THE FOLLOWING CHANGES: CONDITION 6 SHALL BE DELETED. That took place between yester- last night and today. And A NEW CONDITION SHALL BE ADDED AS FOLLOWS:

"NOTWITHSTANDING THE IMPROVEMENTS SHOWN ON THE SEA PLAT, THE APPLICANT MAY CONTINUE USE OF THE ARMISTEAD ROAD ACCESS POINT IN A MANNER ACCEPTABLE TO VDOT. IMPROVEMENTS TO THE ARMISTEAD ROAD ACCESS POINT, SUCH AS THOSE REQUIRED AS A RESULT OF AN ACCESS MANAGEMENT EXCEPTION REVIEW, SHALL BE SUBJECT TO THE REVIEW AND APPROVAL OF VDOT AND SHALL BE INCORPORATED INTO THE APPLICANT'S SITE PLAN SUBMISSION PRIOR TO FINAL SITE PLAN APPROVAL."

William O'Donnell, Zoning Evaluation Division, Department of Planning and Zoning:  
Commissioner Flanagan, you may just want to ask the representative of the applicant to come up and agree on the record to that change.

Commissioner Flanagan: Okay. Is the - - oh the applicant is here. Okay, fine.

Karen Cohen, Esquire, Applicant's Agent, Vanderpool, Frostick, and Nishanian, PC: Karen Cohen with Vanderpool, Frostick, and Nishanian, on behalf of the applicant.

Commissioner Flanagan: Last -- after the public hearing there was not an opportunity to ask you to - whether you confirm the conditions of SEA that were dated October 14. Do you agree with the conditions that are dated October 14, 2015?

Ms. Cohen: As revised tonight.

Commissioner Flanagan: And also do you - - Do you also affirm the - your acceptance of the new condition that I - that I just read?

Ms. Cohen: We do.

Commissioner Flanagan: You do? Thank you.

Vice Chairman de la Fe: Okay.

Commissioner Hart: Mr. Chairman?

Commissioner Flanagan: That's the - the motion.

Commissioner Litzenberger: Second.

Vice Chairman de la Fe: Seconded by Mr. Litzenberger. Any discussion? Questions? Let's go down - - Ms. Hurley first? Or -

Commissioner Migliaccio: Do we have it written down anywhere that we can see it? And has staff looked at this and approved it?

Mr. O'Donnell: Yes, staff has reviewed it internally and it's a - it's a condition that's being modified per the discussion from the Planning Commission and, therefore, it was prudent that he made the motion to make the change. But staff has reviewed it; it's okay, the applicant has agreed to it; and what it's doing is it's basically giving VDOT the - the ability to review any changes to that access point and make sure it meets the Access Management requirements.

Commissioner Migliaccio: And do you have copies so we can at least say we read it before I vote on it?

Mr. O'Donnell: This - - On a change like this, we've - we've done this on other applications before. I mean, it could have been done yesterday. And this is a situation where Commissioner Flanagan and the applicant both agree that we're changing it through a motion rather than through a staff-imposed development condition. Because staff's - staff's development condition was Condition Number 6, which is being deleted.

Commissioner Migliaccio: I understand that. I was just curious if we had a written thing, if Commissioner Flanagan had copies or anything that we could look at. That's all.

Vice Chairman de la Fe: Okay, Commissioner Hurley.

Commissioner Hurley: Yes. In part because we don't have a written copy of what you just read, I still don't understand. Are we still telling people that, okay, for now the entrance will remain as it is, but if VDOT wants to, we're going to tell people to make 180-degree turns and all of those other really bizarre changes to try to get to the south light at Richmond Highway? Is that what it says?

Mr. O'Donnell: The condition is saying that the applicant can use the access point but if it becomes a problem VDOT has the ability to make the change, and - and that's basically what we're trying to do. Our development condition before was trying to, you know, improve the - the access as best as possible through signage and - and deterring the ability. This condition is saying VDOT is going to look at it through the Access Management process.

Commissioner Hurley: But I'm not understanding. It's not - - I'm not concerned about the applicant's access. We already said that the trucks, the gas tankers are still going to have to use the existing access, but the general public is going to have to make that bizarre u-turn through the veterinary hospital. So I'm not talking about the applicant's access. I'm talking about the general public. And so from what this motion says, VDOT could impose that weird 180-degree turn to get out of - and through the veteran's [sic] - I'm sorry, the veterinary hospital to get out to the

stop light. I'm still not sure what we're voting on and I can't support the motion when I really don't understand it.

Vice Chairman de la Fe: Okay, Commissioner Hart.

Commissioner Hart: Yes, thank you, Mr. Chairman. I have objected from time to time when we try and vote on last-minute handouts that we haven't had a chance to understand, and we don't even have a handout now. I heard what Commissioner Flanagan said. I was trying to listen to it and I was trying to understand, and about the best I can understand from it is that it's something like notwithstanding what's on the plat, we're going to try and leave it the way it is for now until VDOT says no. And then, I guess, when VDOT says no, we're back to the mish-mash that nobody seemed to like last night. I'm not sure that's a resolution so much as a - a - kicking it down the road a little bit or - or avoiding the - the - us taking a position on what the - that confusing traffic movement was. And so procedurally, I have a problem voting on something that's not in front of me and I haven't been able to think about, and we haven't really vetted with staff. We had a lot of questions last night that - - I think I might have had more. Having said that, under 9-006, General Standards for a Special Exception, Subsection 4, all these standards have to be met. But Subsection 4 says the proposed use shall be such that pedestrian and vehicular traffic associated with such use will not be hazardous or conflict with the existing and anticipated traffic in the neighborhood. I was not satisfied last night that the proposed use - and this is - "shall" is mandatory - that the proposed use shall be such that pedestrian and vehicular traffic associated with such use would not be hazardous or conflict with the existing and anticipated traffic. I thought there were conflicts with the in-coming left-turn traffic crossing directly in front of the people going out to Armistead Road with that, sort of, left-hand movement through the veterinary hospital. I thought there was another conflict with all of the in and out in that very narrow spot with the three parking spaces in front it. And I hadn't quite heard how we were getting around that, so I think - - if I understand what we're voting on - and we have to vote tonight to get this to the Board by Tuesday - I'm not persuaded at least that 9-006, Subsection 4 has been satisfied. Because I think we're still leaving open, as long as VDOT says no, this - this strange crisscrossing tangle at the point where they cross over to the animal hospital. So unless somebody can explain that to me, I don't think I can support this. Thank you.

Vice Chairman de la Fe: Commissioner Sargeant, you had -

Commissioner Sargeant: Two questions - - just to confirm that there was a conversation with the occupants and operators at the animal hospital.

Commissioner Flanagan: Yes, today I did make a trip down - - I had to down to Dale City. They have another animal hospital in Dale City, so I had to go all the way down to Dale City to meet with the owner at their facility there. And they did indicate to me that they had received the letter - registered letter - that asked them to review and to object if they wished, you know, to the arrangements that are in this application about crossing their property, and they indicated that they had no problem with that. In fact, when they got the building permit for their building, they had to agree to allow the - the station to have access to the site across their property. And so I then asked the owner if the - there was anything in the proffer - or the condition, rather, that they had any limitation on the, you know, the number of vehicles that could cross in front of their

property. And they said no, it was just unlimited; any amount of vehicles coming across their property was okay. And then I asked them if they had any objection to this application as it has been presented to the Planning Commission and they said they had no. And I asked for that to be confirmed in a - in an email to me, which I had not yet received when I came out here this evening, but I can, probably, you know, provide that as part of the record if you wish.

Commissioner Sargeant: And my second question is if you could re-read the motion.

Commissioner Flanagan: The condition?

Commissioner Sargeant: Yes.

Vice Chairman de la Fe: Okay, Mr. Ulfelder. Do you want the -

Commissioner Flanagan: He wants me to - he wants me to - to read it again.

Vice Chairman de la Fe: Yes, read it again.

Commissioner Flanagan: Yes.

Vice Chairman de la Fe: Slowly, so that everybody understands it.

Commissioner Flanagan: The new condition that replaces Condition Number 6, which is on the same subject, is that, "Notwithstanding the improvements shown on the SEA plat, the applicant may continue the use of the Armistead Road access point in a manner acceptable to VDOT. Improvements to the Armistead Road access point, such as those required as a result of an Access Management Exception Review, shall be subject to the review and approval of VDOT and shall be incorporated into the applicant's site plan submission prior to the final site plan approval." Now, I received this latest revision a few minutes before I left for the meeting tonight, and it may be that the staff has some explanation of the Access Management Review that is mentioned.

Mr. O'Donnell: I - I wasn't the coordinator. It's - it's my understanding that, you know, the access is too close to the main intersection as it is and this is a situation where there's minor changes occurring to the site and we did not want to preclude those changes and the ability for the - for the, I guess it's the 7-Eleven, to continue to operate. We did have a development condition as part of our recommendation that tried to make it as less usable as possible, but still usable. This development condition is no longer - is basically saying show - show us at site plan with VDOT at the table to make sure that this is safe. And as part of that, if it's not, well then they have to go through this access management process and it's - it's even more rigorous from that point. So in both - both regards, I think the development condition is doing the same thing. It's making sure that this access is safe while allowing for the continued operation of the use. That's the best I can go without being the coordinator on the case.

Vice Chairman de la Fe: Okay, I know that there's some more questions; however, I would just remind you that we are on verbatim; so, Mr. Ulfelder.

Commissioner Ulfelder: Thank you, Mr. Chairman. If paragraph 6 [*sic*] is struck, and if VDOT says no, why don't they have to come back for an SEA for a - for - going back through what I consider not to be a minor issue - the ingress/egress issue - concerning the neighboring property and Armistead Road?

Mr. O'Donnell: No, they will have to come back for an SEA. That's the risk they're taking by not addressing this now. They could have filed the Access Management waiver earlier in the process and we would have had a better idea. That was a choice they didn't - they decided not to do. It's not a requirement of the zoning, it's a requirement of the site plan. So it is a risk.

Commissioner Ulfelder: And with that in mind, is the only solution if VDOT decides there isn't enough space between the - the stop light - the stop line and the access ingress/egress that's currently there, is the only solution to go back through the animal hospital parking lot?

Mr. O'Donnell: Yes. You would have to close this access and you would have to establish an interparcel access from there. Yes. But again, I don't know the full details of it, but I mean...

Commissioner Ulfelder: Well, that's an awfully big question to leave hanging at this point, to me.

Mr. O'Donnell: Understood.

Vice Chairman de la Fe: Commissioner Hedetniemi.

Commissioner Hedetniemi: Last night, the applicant agreed to a development condition that would essentially say that if it became a problem you would be willing to close off the - the access point between 7-Eleven and the veterinary hospital. Is this amendment taking the place of that?

Mr. O'Donnell: Well, they don't have it - - To my knowledge, we don't an option on the development plan that shows that the access is closed. We can ask the applicant to verify that - what I'm saying, but it's my understanding that we don't have an option. If they could - if they could close the access in a manner that's in substantial conformance and they get permission to - to do the access off the veterinarian, we could look at it from the administrative approval process, but more than likely it would require an SEA. So they'd have to come back through this process.

Commissioner Hedetniemi: You're at a disadvantage because you weren't case handler.

Mr. O'Donnell: I feel it. Yes.

Commissioner Hedetniemi: But there is a real issue here in terms of safety as far as I'm concerned and I'm just not comfortable with VDOT having the final say on - on something that is so open-ended.

Vice Chairman de la Fe: Okay, Mr. Litzenberger.

Commissioner Litzenberger: Thank you, Mr. Chairman. I'm wading in here on behalf of Mr. O'Donnell. After the Trinity Center negotiations in Sully, I asked Kris Abrahamson about this case because it was so unusual. Her response was that when the veterinary clinic got their rezoning approved, they agreed to all the requirements of that cut-through to comply with the requests of VDOT, so they really don't have a say. The fact that they stuck some parking spots adjacent to that, that was their decision because it's their property. But part of their rezoning approval was creating that cut-through, so I don't think we could close it even if we wanted to because then they would be in - in violation of their rezoning. So the way Kris explained it is that this is perfectly legal and that VDOT will support it. I just wanted to help us through this, since we're all on verbatim.

Vice Chairman de la Fe: Okay, Mr. Migliaccio. I just realized that misspoke when I said this was going to be the easy.

Commissioner Migliaccio: I was just thinking that. After - during this debate, I had a chance to walk over and read the new development condition. We've had it read twice. Based on what staff has said and what Mr. Flanagan has said, I'm going to support his motion tonight to get this to the Board. And I think that if we fell back to Development Condition Number 6 that we had last night, I was in support of that option also. So, thank you.

Vice Chairman de la Fe: Okay, any further comments? None. Having heard all that discussion, all those in favor of approving SEA 83-V-083, subject to the development conditions as outlined tonight by Commissioner Flanagan - all those in favor please signify by saying aye.

Commissioners de la Fe, Flanagan, Litzenberger Migliaccio, and Sargeant: Aye.

Vice Chairman de la Fe: Opposed?

Commissioner Hurley: Aye. Aye. [*sic*] Nay.

Vice Chairman de la Fe: Okay, no. Okay.

Commissioner Hart: No.

Vice Chairman de la Fe: Okay, let's - let's take division. Mr. Ulfelder?

Commissioner Ulfelder: No.

Vice Chairman de la Fe: Ms. Hurley?

Commissioner Hurley: No.

Vice Chairman de la Fe: Mr. Migliaccio?

Commissioner Migliaccio: Aye.

Vice Chairman de la Fe: Mr. Sargeant?

Commissioner Sargeant: Aye.

Vice Chairman de la Fe: Mr. Hart?

Commissioner Hart: No.

Vice Chairman de la Fe: Mr. Flanagan?

Commissioner Flanagan: Aye.

Vice Chairman de la Fe: Mr. Litzenberger?

Commissioner Litzenberger: Aye.

Vice Chairman de la Fe: Ms. Hedetniemi?

Commissioner Hedetniemi: No.

Vice Chairman de la Fe: And the Chairman votes aye, and the motion carries five to four, if I did it - if my scribblings are correct. Okay, the motion carries.

Commissioner Flanagan: Thank you, Mr. Chairman.

Vice Chairman de la Fe: Mr. - okay, well you have others.

Commissioner Flanagan: Yes, I have another -

Vice Chairman de la Fe: No, I mean on this one. Don't you have some -

Commissioner Flanagan: Yes, we have two more motions.

Vice Chairman de la Fe: Okay.

Commissioner Flanagan: I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE A MODIFICATION OF THE MINIMUM REAR YARD REQUIREMENT FOR THE EXISTING SERVICE STATION/QUICK SERVICE FOOD STORE BUILDING IN ACCORDANCE WITH SECTION 9-625 OF THE ZONING ORDINANCE TO PERMIT THE BUILDING TO REMAIN AS SHOWN ON THE SEA PLAT.

Commissioner Litzenberger: Second.

Vice Chairman de la Fe: Seconded by Commissioner Litzenberger. Any discussion? Hearing and seeing none, all those in favor please signify by saying aye.



Commissioners de la Fe, Flanagan, Litzenberger, Migliaccio, and Sargeant: Aye.

Vice Chairman de la Fe: Opposed?

Commissioners Hart, Hedetniemi, Hurley, and Ulfelder: Nay.

Vice Chairman de la Fe: So it's the same division, I assume, and the motion carries five to four.

Commissioner Flanagan: Thank you, Mr. Chairman. I NOW MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE A MODIFICATION OF THE FRONTAGE IMPROVEMENTS REQUIREMENT FOUND IN SECTION 17-201 OF THE ZONING ORDINANCE IN FAVOR OF THAT SHOWN ON THE SEA PLAT.

Commissioner Litzenberger: Second.

Vice Chairman de la Fe: Seconded by Commissioner Litzenberger. Any discussion? Hearing and seeing none, all those in favor please signify by saying aye.

Commissioners de la Fe, Flanagan, Litzenberger, Migliaccio, and Sargeant: Aye.

Vice Chairman de la Fe: Opposed?

Commissioners Hart, Hedetniemi, Hurley, and Ulfelder: Nay.

Commissioner Hart: Nay. I'm sorry. I'm reading the wrong one again here.

Vice Chairman de la Fe: Same division as before; the motion carries five to four.

Commissioner Flanagan: And then the last motion that I have, Mr. Chairman, is I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE A WAIVER OF THE TRANSITIONAL SCREENING AND BARRIER REQUIREMENTS IN SECTION 13-302 OF THE ZONING ORDINANCE ALONG THE WESTERN PROPERTY BOUNDARY, and that's it.

Commissioner Litzenberger: Second.

Vice Chairman de la Fe: Seconded by Commissioner Litzenberger. Any discussion? Hearing and seeing none, all those in favor please signify by saying aye.

Commissioners de la Fe, Flanagan, Litzenberger, Migliaccio, and Sargeant: Aye.

Vice Chairman de la Fe: Opposed?

Commissioners Hart, Hedetniemi, Hurley, and Ulfelder: Nay.

Vice Chairman de la Fe: Same division as before; the motion carries five to four. Thank you very much.

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(Each motion carried by a vote of 5-4-3. Commissioners Hart, Hedetniemi, Hurley, and Ulfelder opposed the motion; Commissioners Lawrence, Murphy, Strandlie were absent from the meeting.

JN

Board Agenda Item  
January 12, 2016

3:00 p.m.

Public Hearing on RZ 2015-SP-003 (Christopher Land, LLC) to Rezone from R-1 to R-8 to Permit Residential Development with a Total Density of 6.4 Dwelling Units per Acre (du/ac) and a Waiver of the Minimum District Size Requirement, Located on Approximately 1.88 Acres of Land (Springfield District)

This property is located on the E. side of Burke Lake Rd., 600 ft. N. of its intersection with Shiplett Boulevard. Tax Map 78-3 ((1)) 2.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, November 19, 2015, the Planning Commission voted 7-0-2 (Commissioners de la Fe and Lawrence abstained from the vote and Commissioners Hurley, Migliaccio, and Strandlie were absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of RZ 2015-SP-003, subject to the Proffers dated November 18<sup>th</sup>, 2015;
- Approval of the modification of Paragraph 1 of Section 3-806 of the Zoning Ordinance requiring a minimum district size of five acres for the R-8 District to allow 1.88 acres;
- Approval of the modification of Section 13-303 of the Zoning Ordinance requiring transitional screening to permit the landscaping, as shown on the Generalized Development Plan;
- Approval of a waiver of Section 13-304 of the Zoning Ordinance requiring barriers; and
- Approval of a deviation from Section 12-0508 of the Public Facilities Manual to permit a reduced Tree Preservation Target, as shown on the Generalized Development Plan.

ENCLOSED DOCUMENTS:

Attachment 1: Planning Commission Verbatim Excerpt  
Staff Report previously furnished and available online at:  
<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4500213.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ),  
Nick Rogers, Planner, DPZ

RZ 2015-SP-003 – CHRISTOPHER LAND, LLC

Decision Only During Commission Matters  
(Public Hearing held on November 4, 2015)

Commissioner Murphy: Okay, thank you very much. RZ 2015-SP-003 is a residential – proposed for residential development at – to go from R-1 to R-8, excuse me, with a density of – let me get my notes together here.

Mr. Rogers: 6.4, sir.

Commissioner Murphy: Oh, here it is right here – yeah, 6.58 dwelling units per acre with 12 units – a townhouse development. We had a lot of testimony and I appreciate the folks who sent in testimony – written and email testimony – and those who came to the public hearing, especially our neighbors across the white line – or median strip on Burke Lake Road in the Braddock District. They took an interest in this application and I can see why. Some of the problems that they had with the application were, in fact, what I would call pre-existing conditions. It had been part of Burke Lake Road for a long time. In 1984, the Comprehensive Plan said that Burke Lake Road would become a four-lane road from Rolling Road right out through where the bypass is now. And quite frankly, that is in itself right now, when built in 1977 or – actually, it was built in the late 80s – there is a connectivity between Braddock Road on one side and Braddock Road on the other side. You can go from one end of Braddock Road to the other. If you go down Burke Lake Road across the parkway up onto – across West Ox Road – rather go through the Town of Clifton – meander through the town – you come out, eventually, on Braddock Road. And it was designed to accumulate – to accommodate, I should say, a higher volume of traffic because it was, at that time, an area that was landlocked almost every morning – every evening – people using Burke Lake Road. It was only two lanes. And during that particular time, Lincolnwood was one of the developments that was built in 1977. I'm sure there are some people who have lived in Lincolnwood since 1977 and remember what Burke Lake Road was like without the median strip. And there are some that still – that live in Lincolnia – in Lincolnwood now that bought their property when the median strip was built and knew at that time – and still know – that it's a right-in/right-out community. And that brings about some U-turns at Compton Road and at Shiplett Boulevard. And I know someone said that those extensions of the median strip at Shiplett Boulevard and Burke Lake Road do not help. I disagree with that. I think they help a lot and that was done by a development that was in the Braddock District – and, parenthetically, had the same applicant as we have here this evening. Someone talked about volumes of traffic on Burke Lake Road. This current development would have 96 key – 96 trips during the rush hour. And the other development that's down Burke Lake Road that was in the Braddock District is nine units. They would have 90 vehicle trips per day. Sunrise, which was the big R-2 to R-3 development with the Special Exception for senior housing – they had averaged over about – over 200 vehicle trips per day. So just because there are – U-turns are allowed at several intersections there does not mean that those U-turns were designed to stop growth on Burke Lake Road. On the contrary, there are still some parcels on Burke Lake Road that will also – will develop. And as I mentioned at the end of the public hearing, we received some letters and comments and emails from folks on applications or

problems or issues that were not a part of this application. So going back to what we have to do – we have to look at this application in light of the Comprehensive Plan. And it is in accordance with the Comprehensive Plan – with the Zoning Ordinance – it is in conformance with the Zoning Ordinance – and with the Residential Development Criteria – and it meets the Residential Criteria. It was aired before the West Springfield Land Use – the Springfield Land Use Committee and received approval – rating of approval with one dissenting vote. And also, we have the staff's approval. So therefore, Mr. Chairman, I WOULD MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT IT APPROVE RZ 2015-SP-003, SUBJECT TO the proffers – and there's only that one change in the proffers, which deals with Sheet 5A – with THE PROFFERS DATED NOVEMBER 18<sup>TH</sup>, 2015.

Commissioner Hart: Second.

Vice Chairman de la Fe: Seconded by Mr. Hart. Is there any discussion? Hearing and seeing none, all those in favor please signify by saying, aye.

Commissioners: Aye.

Vice Chairman de la Fe: I, as the Mr. Chairman – I abstain. I was not present for the public hearing. So the motion carries.

Commissioner Murphy: And we have four modifications or waivers to consider. Mr. Rogers, I know you gave your sheet with three and I've misplaced that again. So I WOULD MOVE THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS:

- THE MODIFICATION OF PARAGRAPH 1 OF SECTION 3-806 OF THE ZONING ORDINANCE REQUIRING A MINIMUM DISTRICT SIZE OF FIVE ACRES FOR THE R-8 DISTRICT TO ALLOW 1.88 ACRES;
- MODIFICATION OF SECTION 13-303 OF THE ZONING ORDINANCE REQUIRING TRANSITIONAL SCREENING TO PERMIT THE LANDSCAPING, AS SHOWN ON THE GENERALIZED DEVELOPMENT PLAN;
- WAIVER OF SECTION 13-304 OF THE ZONING ORDINANCE REQUIRING BARRIERS; AND
- Deviation from the – A DEVIATION FROM SECTION 12-0508 OF THE PUBLIC FACILITIES MANUAL TO PERMIT A REDUCED TREE PRESERVATION TARGET, AS SHOWN ON THE GENERALIZED DEVELOPMENT PLAN.

Commissioner Hart: Second.

Vice Chairman de la Fe: Seconded by Mr. Hart. Any discussion? Hearing and seeing none, all those in favor please signify by saying, aye.

Commissioners: Aye.

Vice Chairman de la Fe: Motion carries with my abstention.

Commissioner Lawrence: Mr. Chairman?

Vice Chairman de la Fe: Yes.

Commissioner Lawrence: Although I'm in the affirmative on this proposition, I think I'm going to need to retract my vote because I'm pretty sure I wasn't here for the public hearing.

Vice Chairman de la Fe: Okay.

Commissioner Murphy: Just one other thing, Ms. Strandlie-

Vice Chairman de la Fe: Same abstentions.

Commissioner Murphy: -couldn't be here this evening, but she sent me an email. And I would like to ask the developers – between now and the Board hearing date, she's interested in the proffer regarding the contribution to the homeowners association. If you'd take a look at that and review it and let us know what you're going to do prior to the Board hearing, I would be most appreciative. Thank you very much.

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(Each motion carried by a vote of 7-0-2. Commissioners de la Fe and Lawrence abstained. Commissioners Hurley, Migliaccio, and Strandlie were absent from the meeting.)

JLC

Board Agenda Item  
January 12, 2016

3:00 p.m.

Public Hearing on RZ 2015-SP-004 (Christopher Land, LLC) to Rezone from R-1, WS to PDH-2, WS to Permit Residential Development with an Overall Density of 2 Dwelling Units per Acre and Approval of the Conceptual Development Plan, Located on Approximately 6.53 Acres of Land (Springfield District)

This property is located at the terminus of Crouch Drive. Tax Map 55-4 ((1)) 29 and 29A.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, November 19, 2015, the Planning Commission voted 8-0-1 (Commissioner Lawrence abstained from the vote and Commissioners Hurley, Migliaccio, and Strandlie were absent from the meeting) to recommend to the Board of Supervisors approval of RZ 2015-SP-004, subject to the Proffers dated October 21, 2015.

In a related action, on Thursday, November 19, 2015, the Planning Commission voted 8-0-1 (Commissioner Lawrence abstained from the vote and Commissioners Hurley, Migliaccio, and Strandlie were absent from the meeting) to approve FDP 2015-SP-004, subject to the Board of Supervisors' approval of RZ 2015-SP-004 and the Conceptual Development Plan.

ENCLOSED DOCUMENTS:

Attachment 1: Planning Commission Verbatim Excerpt  
Staff Report previously furnished and available online at:  
<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4504134.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ),  
Nick Rogers, Planner, DPZ

November 19, 2015

Verbatim Excerpt

RZ/FDP 2015-SP-004 – CHRISTOPHER LAND, LLC

Decision Only During Commission Matters  
(Public Hearing held on October 21, 2015)

Commissioner Murphy: Mr. Chairman, I have a decision only this evening on RZ/FDP 2015-SP-004. This is a 6.53 acre parcel to be developed at 2 units – 12 units to the acre, in conformance with the Plan. And, as I mentioned before, when I deferred decision on this, this application is sort of a direct result from Fairfax Forward because it was an area that was considered in the residential section of Fairfax Center. And the recommendation was to up the density from two dwelling units to the acre – two to three. And the citizens in that area are very happy with the fact that they wanted to preserve the high end of the range to be two units to the acre and we moved to do that. And I mentioned once that was accomplished that there would be development on that parcel at two units to the acre so don't be surprised. And, low and behold, there is development coming on that property at two units to the acre and the citizens support it 100 percent. It is in conformance with the Comprehensive Plan, the applicable Zoning Ordinance, and it almost maxes the Fairfax Center checklist for residential development. So therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS TO APPROVE RZ 2015-SP-004, SUBJECT TO THE EXECUTION OF PROFFERS DATED OCTOBER 21<sup>ST</sup>, 2015.

Commissioner Hart: Second.

Vice Chairman de la Fe: Seconded by Commissioner Hart. Any discussion? Hearing and seeing none, all those in favor, please signify by saying aye.

Commissioners: Aye.

Vice Chairman de la Fe: Opposed? Motion carries.

Commissioner Murphy: I FURTHER MOVE, Mr. Chairman, THE PLANNING COMMISSION APPROVE FDP 2015-SP-004, SUBJECT TO THE BOARD'S APPROVAL OF THE REZONING AND CONCEPTUAL DEVELOPMENT PLAN.

Commissioner Hart: Second.

Vice Chairman de la Fe: Seconded by Commissioner Hart. Any discussion? Hearing and seeing none, all those in favor, please signify by saying aye.

Commissioners: Aye.

Vice Chairman de la Fe: Opposed? The motion carries.

//



November 19, 2015

Page 2

RZ 2015-SP-004

(Each motion carried by a vote of 8-0-1. Commissioner Lawrence abstained. Commissioners Hurley, Migliaccio, and Strandlie were absent from the meeting.)

JLC

3:00 p.m.

Public Hearing to Approve a Real Estate Exchange Agreement Between the Board of Supervisors and AvalonBay Communities, Inc. ("AvalonBay") and to Approve the Purchase of Property from 5827 Columbia Pike Associates, LLC, an Affiliate of Landmark Atlantic, Inc. ("Landmark") (Mason District)

ISSUE:

Public hearing to consider the disposition of County-owned property totaling approximately 1.49 acres identified as Tax Maps 61-2 ((19)) parcels 5A and 11A ("County Land") as required by Va. Code Ann. § 15.2-1800 (2012). The disposition of the County Land will be considered through a Real Estate Exchange Agreement ("REEA") between the Board of Supervisors and AvalonBay concerning a portion of the property identified as Tax Maps 61-2 ((1)) parcels 113, 113A, 113C and 114 and 61-4 ((30)) parcels 15 and 17, totaling approximately 4.47 acres ("Avalon Land"). The public hearing will also consider the purchase by the Board of adjoining land identified as Tax Map 61-2 ((1)) parcel 12A and totaling approximately 1.44 acres, from Landmark ("Landmark Land") for the primary purpose of a road connection to Seminary Road and new open space. The County Land, Avalon Land and Landmark Land shall hereafter be collectively known as the "Subject Property." It is intended that, in the future, a rezoning action will be considered on the Subject Property to permit residential development by AvalonBay and a future County office site, as well as the connection to Seminary Road.

RECOMMENDATION:

The County Executive recommends the Board approve the disposition of the County Land through an REEA with AvalonBay providing for an exchange of real property and joint infrastructure development in conjunction with the development of the Subject Property, and that the Board approve the purchase of the Landmark Land, primarily for public roads and open space.

TIMING:

On December 8, 2015, the Board authorized advertisement of the public hearing to be held on January 12, 2016, at 3:00 p.m.

BACKGROUND:

The County is the owner of the County Land (approximately 1.49 acres), AvalonBay is the contract purchaser of the Avalon Land (approximately 4.47 acres), and Landmark is the owner of the Landmark Land (approximately 1.44 acres). These land areas are

shown, approximately, on Attachment 1, with the County Land shown as Area A, the Avalon Land shown as Areas B1 and B2, and the Landmark Land shown as Area C.

The Comprehensive Plan recommends that, with consolidation of at least five acres, the Subject Property may be appropriate for retail/office/residential mixed-use development at an intensity of up to 2.25 FAR. In addition, the Comprehensive Plan calls for a road realignment to connect Seminary Road with Columbia Pike and Moncure Avenue through the eastern portion of the Subject Property. The road realignment through the Subject Property will necessitate the removal of the office building on the Landmark Land.

The County Land is the site of the Baileys Crossroads Community Shelter ("Shelter"), identified in the adopted Capital Improvements Plan ("CIP") for reconstruction. In addition, the CIP identifies a need for a number of community services, currently housed in leased space in the area, to be consolidated into County-owned space in an East County Human Services Center ("ECHSC"), which could be constructed on the future County office site.

AvalonBay will seek rezoning of the Subject Property to permit the construction of a residential mid-rise apartment development of approximately 375 dwelling units, a future County office building, which may house the ECHSC, and the connection to Seminary Road. As proposed, the residential development would be located on the western portion of the site, fronting Moncure Avenue. The County office building would be located on the eastern portion of the site, fronting on the new road (the first phase of the connection to Seminary Road envisioned by the Comprehensive Plan).

The initial step in this process is for the County to purchase the Landmark Land (Area C shown on Attachment 1) to effectuate the first phase of the road network envisioned by the Comprehensive Plan and to allow for development of the entire site in a more comprehensive, cost effective manner. After purchase of the Landmark Land, the County's holdings will total approximately 2.93 acres (Areas A and C). The second step is for the County and AvalonBay, through the REEA, to exchange an equal amount of real estate such that AvalonBay's property is located on the western side of the site (Areas A and B1) and the County's property is consolidated on the eastern side of the site (Areas B2 and C). The REEA will provide for common infrastructure and rezoning costs to be shared between the County and AvalonBay.

The REEA will not require the County to move forward with any specific development of the future County office site, such as, for example, the ECHSC; any such design and construction will be subject to future Board approval. The Shelter on the County Land will be relocated to another site in the area prior to the AvalonBay residential development. The design and construction of both the temporary and permanent locations of the Shelter will also be subject to future Board approval.

Major terms of the Purchase Agreement with Landmark are as follows:

1. Purchase of the Landmark Land (Area C shown on Attachment 1) for a total of \$6,600,000; \$ 6,350,000 of which will be paid by the County and \$250,000 of which will be paid by AvalonBay pursuant to the REEA.
2. The purchase is contingent upon approval of the joint rezoning application to be pursued by AvalonBay.
3. Provided that the building on the Landmark Land is vacant, the County is prepared to close on this transaction within 30 days after approval. At closing, the existing lease of a County-sponsored dental clinic located within the existing Landmark building will terminate, and all rent will abate (which would otherwise be the County's responsibility through June 30, 2018).

Major terms of the REEA with AvalonBay are as follows:

1. Exchange of the County Land (Area A shown on Attachment 1) for approximately 1.49 acres of the Avalon Land (Area B2 shown on Attachment 1).
2. Closing on this exchange is contingent upon approval of the joint rezoning application to be pursued by AvalonBay, which shall not be later than July 1, 2017.
3. AvalonBay will place an \$800,000 deposit in escrow which will be forfeited in the event of a default on the REEA by AvalonBay.

The full text of the Purchase Agreement with Landmark and the REEA with AvalonBay are available online at: <http://www.fcrevite.com/SEQDocuments.pdf>

FISCAL IMPACT:

The County will pay \$6,350,000 to purchase the Landmark Land with an estimated \$880,000 in additional funds required for the demolition of the office building currently on the Landmark Land. Total funding is available in Fund 40010, County and Regional Transportation Projects, in the amount of \$7,230,000 for the property as Right of Way (ROW) acquisition for a future street connection between Columbia Pike and Seminary Road. Transportation staff will return to the Board in February 2016 to request this authorization, and the funding will formally be moved as part of the FY 2016 Carryover Review.

The County's share of the rezoning and common infrastructure costs to support the Development Agreement with AvalonBay will be approximately \$147,000. Funding is available to authorize the Development Agreement in Fund 30010, General Construction and Contributions, Project 2G25-085-000, Public Private Partnership Development.

The estimated cost for the relocation of the Shelter to a temporary location will be \$2,100,000. Funds are available in the amount of \$1,100,000 in Fund 30010, General Construction and Contributions, Project HS-000013, Bailey's Homeless Shelter. The

Board Agenda Item  
January 12, 2016

additional \$1,000,000 will be reallocated from balances available in Project HS-000005, Merrifield Center, as part of the FY 2016 Third Quarter Review.

ENCLOSED DOCUMENTS:

Attachment 1: Approximate land areas of ownership on the Subject Property

The full text of the Purchase Agreement with Landmark and the REEA with AvalonBay are available online at: <http://www.fcrevite.com/SEQDocuments.pdf>

STAFF:

Robert A. Stalzer, Deputy County Executive

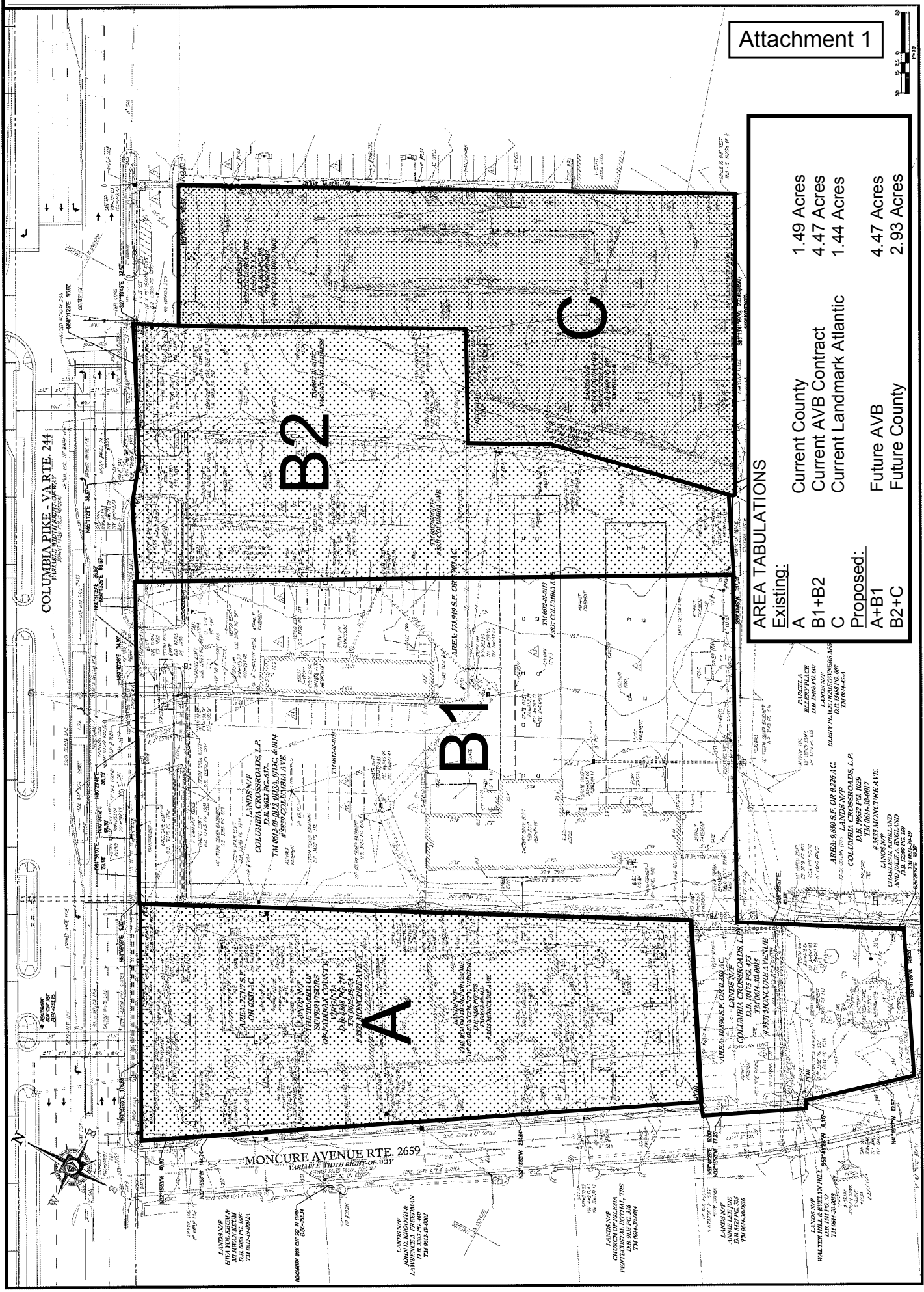
Alan Weiss, Office of the County Attorney

James Patterson, Department of Public Works and Environmental Services

Barbara Byron, Office of Community Revitalization

Katayoon Shaya, Department of Public Works and Environmental Services

Tracy Strunk, Office of Community Revitalization



AREA TABULATIONS

Existing:

A	1.49 Acres
B1+B2	4.47 Acres
C	1.44 Acres
Proposed:	
A+B1	4.47 Acres
B2+C	2.93 Acres

Current County  
Current AVB Contract  
Current Landmark Atlantic

Future AVB  
Future County

Board Agenda Item  
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3:30 p.m.

Public Hearing on SE 2014-MV-051 (Testey Hamdael dba Wonderful Child Care) to Permit a Home Child Care Facility, Located on Approximately 10,294 Square Feet of Land Zoned PDH-4 (Mount Vernon District)

This property is located at 8257 Native Violet Drive, Lorton, 22079. Tax Map 107-2 ((10)) 6.

PLANNING COMMISSION RECOMMENDATION:

On Wednesday, November 4, 2015, the Planning Commission voted 10-0 (Commissioners de la Fe and Lawrence were absent from the meeting) to recommend to the Board of Supervisors approval of SE 2014-MV-051, subject to the Development Conditions dated November 2, 2015.

ENCLOSED DOCUMENTS:

Attachment 1: Planning Commission Verbatim Excerpt  
Staff Report previously furnished and available online at:  
<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4504552.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ),  
Carmen Bishop, Planner, DPZ

SE 2014-MV-051 – TESTEY HAMDAEL d/b/a WONDERFUL CHILD CARE

After Close of the Public Hearing

Chairman Murphy: Public hearing is closed, Mr. Flanagan.

Commissioner Flanagan: Thank you, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF SE 2014-MV-051, SUBJECT TO THE CONDITIONS dated – THAT ARE NOW DATED NOVEMBER 2, 2015.

Commissioners Litzenberger and Sargeant: Second.

Chairman Murphy: Seconded Mr. Litzenberger and Mr. Sargeant. Is there a discussion of the motion? All those in favor –

Commissioner Hart: Mr. Chairman?

Chairman Murphy: Yes.

Commissioner Hart: Did we ask the applicant if she had –

Chairman Murphy: He did.

Commissioner Flanagan: Yes.

Commissioner Hart: Okay, all right.

Chairman Murphy: All those in favor of the motion to recommend to the Board of Supervisors to approve SE 2014-MV-051, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

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(The motion was carried by a vote of 10-0. Commissioners de la Fe and Lawrence were absent from the meeting.)

TMW



Board Agenda Item  
January 12, 2016

3:30 p.m.

Public Hearing on AR 2006-SP-002 (George F. and Susan M. Schulz) to Permit  
Renewal of a Previously Approved Agricultural and Forestal District, Located on  
Approximately 23.03 Acres of Land Zoned R-C, WS (Springfield District)

This property is located at 8142 & 8146 Rondelay Lane, Fairfax, 22039. Tax Map 96-3  
((1)) 7Z and 8Z; and 96-3 ((2)) 10Z and 11Z.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, December 10, 2015, the Planning Commission voted 11-0  
(Commissioner Lawrence was absent from the meeting) to recommend to the Board of  
Supervisors that it amend Appendix F of the Fairfax County Code to renew the Schulz  
Local Agricultural and Forestal District, subject to the proposed ordinance provisions  
contained Appendix 1 of the Staff Report.

ENCLOSED DOCUMENTS:

Attachment 1: Planning Commission Verbatim Excerpt  
Staff Report previously furnished and available online at:  
<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4508327.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ),  
Mike Lynskey, Planner, DPZ

AR 2006-SP-002 – GEORGE F. & SUSAN M. SCHULZ

After Close of the Public Hearing

Vice Chairman de la Fe: I'll close the public hearing; Mr. Murphy.

Commissioner Murphy: Thank you, very much. This is a straightforward renewal of an agricultural and forestal district in the Springfield District; 23.03 acres on Rondelay Lane in Fairfax Station. And therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT IT AMEND APPENDIX F OF THE FAIRFAX COUNTY CODE TO RENEW THE SCHULZ LOCAL AGRICULTURAL AND FORESTAL DISTRICT, SUBJECT TO THE PROPOSED ORDINANCE PROVISIONS CONTAINED APPENDIX 1 OF THE STAFF REPORT.

Commissioner Hart: Second.

Vice Chairman de la Fe: Seconded by Mr. Hart. Is there any discussion? Hearing and seeing none, all those in favor please signify by saying aye.

Commissioners: Aye.

Vice Chairman de la Fe: Opposed? The motion carries.

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(The motion carried by a vote of 11-0. Commissioner Lawrence was absent from the meeting.)

JN

Board Agenda Item  
January 12, 2016

3:30 p.m.

Public Hearing on SE 2014-PR-067 (Konstantin E. Panov and Alla Davidova dba The Butterfly Effect, Inc.) to Permit a Child Care Center, Located on Approximately 18,679 Square Feet of Land Zoned R-2 (Providence District)

This property is located at 9653 Blake Lane, Fairfax, 22031. Tax Map 48-3 ((19)) 1.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, September 17, 2015, the Planning Commission voted 8-0-2 (Commissioners Sargeant and Strandlie abstained from the vote and Commissioners Flanagan and Lawrence were absent from the meeting) to recommend to the Board of Supervisors denial of SE 2014-PR-067.

ENCLOSED DOCUMENTS:

Attachment 1: Planning Commission Verbatim Excerpt  
Staff Report previously furnished and available online at:  
<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4482543.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ),  
Suzanne Wright, Planner, DPZ

SE 2014-PR-067 KONSTANTIN E. PANOV

Decision Only During Commission Matters  
(Public Hearing held on April 16, 2015)

Commissioner Hart: I have a decision on the Panov case. The Planning Commission has received two letters of support which I would ask be placed in the record. We also received this evening a statement to the Planning Commission dated September 17<sup>th</sup> with some attachments and I would ask that also be included in the record. I-I thank the applicant for providing additional information to staff and I thank the speakers that testified at the public hearing. I also want to thank Suzanne Wright for her fine assistance on this case, as well as Mike Wing in Supervisor's Smyth's office. As the Commission will recall, this was a special exception application for a child care center in an existing residence on Blake Lane, originally requesting 25 children, reduced to 20 following the public hearing, and reduced again to 15 children. Staff recommended denial, both in the original staff report and two subsequent addenda evaluating the provisions, and I would adopt the staff's rationale. While I believe that the proposed use is worthwhile, I cannot support this application on this site. I personally visited the property and agreed with staff that this particular lot has a number of characteristics and constraints that make it unsuitable for a use of this intensity. I do not believe the required standards for a special exception have been met in several respects. The site is fairly small to begin with - less than one-half acre. It also is triangular in shape, making provision of the required landscaping buffers very challenging. It is on a very busy street with a fairly short and shallow circular driveway, which presents conflicts for traffic potentially queueing out into the travel lanes of Blake Lane. The onsite configuration also places the pickup and drop-off for the children along the same travel aisle as the cars entering and exiting the site, creating additional potential conflicts. Parking space length is proposed at 16.6 feet, which is the absolute rock bottom in the PFM, and is shorter than many vehicles. While the site constraints obviously affect the area available for parking, this is less than ideal for functional use. The applicant, following the public hearing, at one point suggested a possible off-site parking arrangement at a nearby church, but even if a shared parking arrangement could have been approved, I believe the distance was too great to be functionally workable, especially in inclement weather. Staff was not supportive of off-site parking and the applicant abandoned that alternative. Topographic difficulties in the rear of the site and the location of the existing building further complicate any reconfiguration of the parking and drop-off. Greater extension of the parking area also would tend to conflict with the residential character of the neighborhood and still would need to be buffered from adjacent residences. Adequate stormwater management measures also would need to be accommodated somewhere on this constrained site. In that regard, although the most recent special exception plat depicts a proposed bioretention ditch, it still has not been clearly demonstrated, as pointed out by staff in the second addendum, that the ditch would meet applicable water quality standards and all other stormwater requirements. Moreover, the placement and, potentially, the

extent of these facilities would change and become even more difficult if additional pavement was added to the design to address the circulation issues. On a special exception we must make a finding that all the required standards have been met. I agree with staff's conclusions, as set forth in the staff report and addenda, that under Section 9-006, General Standards 1, 2, 3, 4 and 7 have not been met. The proposed use is too intense for this relatively small, triangular lot, particularly with its topography, the difficult access point from Blake Lane, and the inability to safely configure the traffic pattern in light of the dwellings placement on the lot. Again, off-site parking is not feasible and it has not been demonstrated to staff's satisfaction that there is room for stormwater management on this small lot if other Ordinance requirements are met. Although we need quality childcare in the community, and this unique program appears to provide a valuable option to local parents, we must find that all the applicable standards have been met on every application. There may be something less intense which is appropriate here or some other better location for this use, but on this particular site the application falls short. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT SE 2014-PR-067 BE DENIED.

Chairman Murphy: Is there a second to the motion?

Commissioner Hedetniemi: Second.

Chairman Murphy: Seconded by Ms. Hedetniemi. Is there a discussion? All those in favor of the motion to recommend to the Board of Supervisors that it deny SE 2014-PR-067 say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioner Sargeant: Mr. Chairman, I abstain, not present.

Chairman Murphy: Motion carries, Mr. Sargeant abstains.

Commissioner Strandlie: Mr. Chairman, I wasn't present for the hearing I would like to abstain too.

Chairman Murphy: All right, Ms. Strandlie abstains also.

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(The motion carried by a vote of 8-0-2. Commissioners Sargeant and Strandlie abstained from the vote. Commissioners Flanagan and Lawrence were absent from the meeting.)

TMW

Board Agenda Item  
January 12, 2016

3:30 p.m.

Public Hearing on SEA 87-L-012-02 (R Joun Enterprise LLC, Roland Joun, Trustee and Maria Joun, Trustee) to Amend SE 87-L-012 Previously Approved for a Service Station and Quick Service Food Store to Permit Site Modifications and Modification to the Development Conditions, Located on Approximately 30,476 Square Feet of Land Zoned C-6, HC, SC, and CRD (Lee District)

This property is located at 6703 Backlick Road, Springfield, 22150. Tax Map 90-2 ((1)) 25A and 25B.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, December 10, 2015, the Planning Commission voted 11-0 (Commissioner Lawrence was absent from the meeting) to recommend to the Board of Supervisors approval of SEA 87-L-012-02, subject to the Development Conditions dated December 9, 2015, with the following revisions:

- Removal of the last sentence in Condition 12;
- Revise Condition 13 as follows: "The development shall consist of two phases. Phase I improvements shall consist of those improvements listed in Development Conditions 18, 19, 20, 21, 23, and 28 below. Phase II shall consist of the installation of two exterior auto lifts, as show on the SEA Plat. Phase II shall not be constructed until all improvements listed in Phase I have been completed. The exterior auto lifts shall require any applicable site plan and permit approvals prior to their installation"; and
- The addition of the following Condition: "To reduce noise levels associated with any impact guns for outdoor vehicle service, the employees of the service station shall use Quiet Gun Impact Guns during outdoor vehicle service."

ENCLOSED DOCUMENTS:

Attachment 1: Planning Commission Verbatim Excerpt  
Staff Report previously furnished and available online at:  
<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4508279.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ),  
Mike Van Atta, Planner, DPZ

SEA 87-L-012-02 – R JOUN ENTERPRISE LLC; ROLAND JOUN, TRUSTEE & MARIA JOUN, TRUSTEE

Decision Only During Commission Matters  
(Public Hearing Held on December 9, 2015)

Commissioner Migliaccio: Thank you Mr. Chairman. Last night we held a public hearing on an SEA for a service station on Backlick Road in the Springfield CRD. Unlike most cases in Lee District, this application had speakers. While these speakers did not participate through the well-established Lee District community land use process, it does not discount the land use concerns they raised as a neighbor to the service station. My hope is that through the new development conditions before the Planning Commission, we are able to address many of those concerns. What we are not able to address is the sincerity of the applicant to follow through on these conditions or any past personal issues not land use related. The applicant is fully aware that his gas station is under scrutiny by his neighbor and is fully expected to live up to these development conditions. That is why the outdoor lifts, which have caused the greatest concern, are conditioned to only go in after all other development conditions listed in Phase One are implemented. Other conditions address the parking issue with new striping of spaces, signage directing customers to park onsite and not in adjacent lots, and the extra pavement on the site, will allow for a drive aisle to better circulate vehicles, provided all others are properly parked. I believe that this path forward is the best route to bring the applicant into compliance and to give all a so-called clean slate moving forward. The Lee District Land Use Advisory Committee also believes this and voted 19-0-1 to pursue this path. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF SEA 87-L-012-02, SUBJECT TO THE DEVELOPMENT CONDITIONS DATED DECEMBER 9, 2015, WITH THE FOLLOWING REVISIONS –

Chairman Murphy: Hold on a minute. Do you want to bring up the applicant?

Commissioner Migliaccio: After, Mr. Chairman, after I –

Chairman Murphy: Okay.

Commissioner Migliaccio: – read my revision; REMOVAL OF THE LAST SENTENCE IN CONDITION 12; REVISE CONDITION 13 TO STATE “THE DEVELOPMENT SHALL CONSIST OF TWO PHASES. PHASE I IMPROVEMENTS SHALL CONSIST OF THOSE IMPROVEMENTS LISTED IN DEVELOPMENT CONDITIONS 18, 19, 20, 21, 23, AND 28 BELOW. PHASE II SHALL CONSIST OF THE INSTALLATION OF TWO EXTERIOR AUTO LIFTS, AS SHOW ON THE SEA PLAT. PHASE II SHALL NOT BE CONSTRUCTED UNTIL ALL IMPROVEMENTS LISTED IN PHASE I HAVE BEEN COMPLETED. THE EXTERIOR AUTO LIFTS SHALL REQUIRE ANY APPLICABLE SITE PLAN AND PERMIT APPROVALS PRIOR TO THEIR INSTALLATION”; AND THE ADDITION OF THE FOLLOWING CONDITION: TO REDUCE NOISE LEVELS ASSOCIATED WITH ANY IMPACT GUNS FOR OUTDOOR VEHICLE SERVICE, THE EMPLOYEES OF THE

SERVICE STATION SHALL USE QUIET GUN IMPACT GUNS DURING OUTDOOR VEHICLE SERVICE.

Commissioner Sargeant: Second.

Commissioner Migliaccio: Thank you, and can I get the applicant to come down, please.

Roland Joun, Applicant: Yes, my name is Roland Joun.

Commissioner Migliaccio: Did you have a chance to read the development conditions and understand the development conditions that I just revised? And do you agree to abide by these?

Mr. Joun: Yes, I do.

Commissioner Migliaccio: Thank you.

Chairman Murphy: Would you state your name for the record please?

Mr. Joun: My name is Roland G. Joun. J-O-U-N.

Chairman Murphy: Thank you very much. That motion was seconded by Mr. Sargeant. Is there a discussion of the motion? All those in favor of the motion to recommend to the board of supervisors that it approve SEA 87-L-012-02, subject to development conditions as amended tonight by Mr. Migliaccio, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

//

(The motion carried by a vote of 11-0. Commissioner Lawrence was absent from the meeting.)

JN



Board Agenda Item  
January 12, 2016

4:00 p.m.

Public Hearing on SEA 84-M-012-02 (Quan Q. Nguyen and Ngan T. Nguyen) to Amend SE 84-M-012 Previously Approved for a Medical Office to Permit Modifications to Site and Development Conditions, Located on Approximately 20,620 Square Feet of Land Zoned R-5, SC and HC (Mason District)

This property is located at 4217 Evergreen Lane, Annandale, 22003. Tax Map 71-2 ((2)) 27

PLANNING COMMISSION RECOMMENDATION:

On Thursday, September 24, 2015, the Planning Commission voted 5-0-4 (Commissioners de la Fe, Flanagan, Hart, and Murphy abstained and Commissioners Lawrence, Litzenberger, and Ulfelder were absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of SEA 84-M-012-02, subject to the Development Conditions dated September 24<sup>th</sup>, 2015;
- Approval of a modification of Additional Standards for Offices (Sect. 9-515) to allow a professional office use in a newly-constructed structure that maintains the appearance of a single-family residence, rather than in an existing dwelling constructed prior to 1973;
- Direct the Director of DPWES to approve: Deviation of tree preservation target, per PFM Sect. 12-0508.3A;
- Approval of a modification of the transitional screening requirements, in favor of the vegetation shown on the SEA Plat, and as conditioned;
- Approval of a modification of the interior and peripheral parking lot landscaping requirements, in favor of the vegetation shown on the SEA Plat, and as conditioned; and
- Waive loading space requirement, due to a residential-style garbage collection plan, as conditioned.

Board Agenda Item  
January 12, 2016

ENCLOSED DOCUMENTS:

Attachment 1: Planning Commission Verbatim Excerpt  
Staff Report previously furnished and available online at:  
<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4499591.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ),  
Mike Lynskey, Planner, DPZ

SEA 84-M-012-02 – QUAN Q. NGUYEN & NGAN T. NGUYEN

Decision Only During Commission Matters  
(Public Hearing held on September 17, 2015)

Commissioner Strandlie: Thank you, Mr. Chairman. Mr. Chairman, tonight we are back to make a decision on SEA 84-M-012-02 on Mr. Nguyen. Dr. Nguyen, if you would come down, please – come down to the podium. The – everyone should’ve received a memo this afternoon from staff, further explaining that the legislative history of the Comprehensive Plan – so I won’t go into that. I’ll go ahead and make my statement and then affirm the conditions. So we’ll go ahead. Tonight, we’re back to make a decision on SEA 84-M-012-02 – Dr. Nguyen’s application to build a new professional medical office on the same site where his practice has been located since 1984. His medical office is currently housed in a single-family dwelling built in 1941 and is the sole remaining one-story detached structure that remains on this street. The professional office is allowed under a previously-granted Special Exception. He seeks – seeks a special exemption to continue this use in a new structure. Last week, following the staff report and public hearing, several Commissioners voiced concern with language in the long-ago enacted Comprehensive Plan. The Plan language states that professional offices could be maintained in existing – emphasis added – structures, provided that these structures and their lots retain their single-family residential appearance. There’s a question of whether the Comprehensive Plan Amendment should’ve been amended to allow this use since the medical practice would no longer be housed in an existing structure. This section of Evergreen Lane, which is substantially commercial, has a long history in planning, zoning, and construction. In addition to the information included in the previously-published staff report, staff prepared a planning history akin to a legislative history, if you will, that provides additional background information on this plot. The memo was circulated among Commissioners and submitted for the record. As explained by staff, after careful consideration, that determine was – a determination was made that, despite the word, “existing,” the stability of the neighborhood was better-served by maintaining the current Plan language. The staff’s position was that the word, “existing,” does not hold as much importance as the stated intent of the plan, which is to provide for transitional uses in the area and to protect adjacent residential uses from commercial development. Further, the word, “existing,” was used to ensure conformity with a neighborhood, as it existed in 1984. I agreed with the staff determination in this case and plan to move for approval. I believe that the new residential-looking professional office will more closely conform to the existing neighborhood look and feel than the existing 1941 one-story dwelling. There will be no change in existing use. The building will continue to house a medical practice, which serves the community – and, in particular, a senior center located steps away. The structure will continue to provide a transition between the three – and perhaps four – residences on the south side. In fact, with new buffering and a fence, the transition should be improved. The Mason District Land Use Committee reviewed the application twice. And the only concern was making sure the building maintained a residential appearance. That was accomplished in both the drawings and the conditions. And there is no community opposition that I know of to this application. Therefore, I’d like to ask the applicant to confirm the conditions for the application.

Quan Nguyen, Applicant/Title Owner: Yes. I confirm that the building architecture shall generally conform to the conceptual building elevations included on Sheet 4 of the SEA Plat and

exterior materials shall be of high quality – no vinyl siding – and compatible with neighboring residential properties.

Chairman Murphy: Thank you. Would you identify yourself for the record, please? Give us your name so we'll know that-

Mr. Nguyen: Yes. My name is Quan Nguyen and I am the owner of the property.

Chairman Murphy: Okay. Thank you very much.

Mr. Nguyen: Thank you.

Commissioner Strandlie: And that is on the memo dated September 24<sup>th</sup>, correct?

Mr. Nugyen: Yes. Yes.

Commissioner Strandlie: Thank you. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF SEA 84-M-012-02, SUBJECT TO THE CONDITIONS SET FORTH IN THE MEMO DATED SEPTEMBER 24<sup>TH</sup>, 2015.

Commissioner Hedetniemi: Second.

Chairman Murphy: Seconded by Ms. Hedetniemi. Is there a discussion of the motion?

Commissioner Hart: Mr. Chairman?

Chairman Murphy: Mr. Hart.

Commissioner Hart: Thank you. I appreciate the level of effort that has gone into the justification of staff's conclusion following the public hearing, but I still cannot agree with it. I think in a situation where we have extraordinarily specific Plan text, we run the risk of seeming arbitrary when, out of expediency or whatever other justification, we disregard Plan text like this. We make a lot of people jump through a lot of hoops for all kinds of applications. A lot of people need Plan Amendments or they have to, as we've seen, file FDPAs for patios in P-Districts and things. And it becomes difficult to tell the next person that comes along with a – with a good application with a positive use that benefits the community with an attractive building – that is just simply not in conformance with what the Plan text calls for. A situation like this where we have an existing commercial use, which is expressly authorized in an existing building – we have an application to expand the size of the building by four or five times and expand the parking area adjacent to undeveloped residential, which hasn't come in yet. This application should've had a Plan Amendment and I think most applications like this – staff would insist on a Plan Amendment. Once we take this new approach, it becomes very difficult to say no to the next people. I recognize, also, that may be an unintended consequence of some of what's happened with Fairfax Forward. We've made it very difficult for people to get a Plan Amendment – or a Plan Amendment in any reasonable amount of time. And I sense that under the – those types constraints, it makes it more important to single out certain cases and, perhaps, look the other

way when we have Plan text saying no. I think that's a very bad idea. I think we're going to have problems justifying that to the citizens and we ought not be doing that. So I won't be able to support the motion. And I would agree with Commissioner Ulfelder's comments – he's not here tonight – Commissioner Ulfelder's comment at the previous hearing. Thank you, Mr. Chairman.

Chairman Murphy: Further discussion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SEA 84-M-012-02, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioner Hart: Abstain.

Commissioner de la Fe: I'll abstain.

Chairman Murphy: And the Chair abstains. And Mr. de la Fe abstains.

Commissioner Flanagan: One more.

Chairman Murphy: And Mr. Flanagan abstains – not present for the public hearing. The motion carries. Thank you very much.

Commissioner Strandlie: I also have one further. I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVE THE WAIVERS AND CONDITIONS LISTED IN THE STAFF REPORT, which also was distributed to you on a sheet DATED SEPTEMBER 17<sup>TH</sup>, 2015.

Commissioner Hedetniemi: Second.

Chairman Murphy: Seconded by Ms. Hedetniemi. Is there a discussion of that motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Same abstentions. Okay? Same abstentions. Thank you very much.

//

(Each motion carried by a vote of 5-0-4. Commissioners de la Fe, Flanagan, Hart, and Murphy abstained. Commissioners Lawrence, Litzenberger, and Ulfelder were absent from the meeting.)

JLC

Board Agenda Item  
January 12, 2016

4:00 P.M.

Public Hearing on Spot Blight Abatement Ordinance for 3506 Elmwood Drive,  
Alexandria, VA 22303 (Lee District)

ISSUE:

Public Hearing to adopt a Spot Blight Abatement Ordinance for 3506 Elmwood Drive, Alexandria, VA 22303 (Tax Map 082-2 ((13)) 0073) and approval of a blight abatement plan for the Property.

RECOMMENDATION:

The County Executive recommends that the Board adopt an ordinance to declare 3506 Elmwood Drive blighted, constituting a nuisance, and approve the blight abatement plan for the Property.

TIMING:

On November 17, 2015 the Board authorized advertisement of this public hearing to be held Tuesday, January 12, 2016, at 4:00 pm.

BACKGROUND:

Va. Code Ann. § 36-49.1:1 (2014) (Spot Blight Abatement Statute) allows the Board, by ordinance, to declare a property as "spot blight." Under Va. Code Ann. § 36-3 (2014), a property is considered "blighted" if any structure or improvement on that property endangers the public health, safety, or welfare because it is "dilapidated, deteriorated, or violates minimum health and safety standards." If, after reasonable notice, the owner fails to abate or obviate the conditions that cause a property to be blighted, the Board may approve a spot blight abatement plan, and may recover the costs of implementing that plan against the property owner in the same manner as for the collection of local taxes. Va. Code Ann. § 36-49.1:1(D)—(E).

The structure on the subject property is a one-story wood-framed dwelling unit that was built in 1950 according to Fairfax County tax records. Based on a complaint of neglect and maintenance concerns, a property maintenance case was generated, and an exterior inspection conducted by the Department of Code Compliance (DCC) on October 25, 2011. The owner, Laura Daleski, did not comply with a written Notice of Violation dated October 31, 2011, and during a follow up inspection, the Property Maintenance Investigator observed unsafe conditions. The owner refused entry, and based on the observed conditions, the Investigator obtained an inspection warrant on

Board Agenda Item  
January 12, 2016

August 29, 2012. Conditions documented by the fire inspection indicated falling ceilings due to roof leaks, excessive rubbish, and animal excrement on the floors throughout the dwelling. The Fire Marshal deemed the structure to be unsafe, and he posted an Evacuation Order.

On September 5, 2012, the Property Maintenance Investigator issued another Notice of Violation for interior issues. The owner vacated the premises and the dwelling has remained vacant since that time. The case was referred to the Office of the County Attorney for litigation for failure to comply with the Notice of Violation and a Final Order was entered on May 2, 2013, requiring the owner to abate the violations by July 1, 2013. Subsequent Rules to Show Cause against the owner could not be pursued because she could not be located. Due to the unresponsiveness by the owner to comply with the Notice and the Court Order, the case was referred to the Blight Abatement Program (BAP) in December 2013. Inspections since that time have revealed that the roof is showing significant collapse and the front wall is bowing from structural damage.

On October 1, 2015, Elizabeth Perry, the Property Maintenance Code Official requested county staff to install a fence around the structure as an emergency measure to protect the public in the event of collapse.

This property was reviewed by the Neighborhood Enhancement Task Force (NETF) on October 21, 2015, and the NETF Committee determined the property met the blighted property guidelines and made a preliminary blight determination. Certified and regular Notice was sent to the owner advising her of this determination. BAP staff sent certified and regular notices to the owner advising her of this determination. To date, she has not responded or otherwise submitted a spot blight abatement plan acceptable to the County.

Due to the increasing deterioration of the structure, BAP staff has determined that the dwelling is not economically feasible to repair and recommends demolition. The NETF concurs in this recommendation.

In accordance with the Spot Blight Abatement Statute, the Board, by Ordinance, may declare the Property to be blighted and approve abatement of blight. State Code requires that the Board provide notice concerning adoption of such an ordinance. Notice was published on December 25, 2015 and January 1, 2016.

Although the County will continue to seek cooperation from the owners to eliminate blighted conditions, it is requested that a public hearing, in accordance with the Spot Blight Abatement Statute, be held to adopt an Ordinance declaring the property to be blighted. The Ordinance will authorize the elimination of such blight by demolition if the property owner fails to abate the blighted conditions within thirty days after notification to the property owner of the Board's action. The county will incur the cost, expending

Board Agenda Item  
January 12, 2016

funds that are available in Fund 300-C30010, General Construction and Contributions,

Project 2G97-001-000, Strike Force Blight Abatement. The County will then pursue reimbursement from the owner who is ultimately liable for all abatement costs incurred.

A lien will be placed on the property and recorded in the County land records and judgment records.

FISCAL IMPACT:

In the event that the blighted conditions are not eliminated by the owner, the County will fund the demolition from Fund 300-C30010, General Construction and Contributions, Project 2G97-001-000, Strike Force Blight Abatement. Funding is available in Project 2G97-001-000 to proceed with the demolition estimated to cost approximately \$22,000.

It is anticipated that all of the costs of the blight abatement will be recovered from the property owner. Funds recovered will be allocated to the Blight Abatement Program in order to carry out future blight abatement plans.

ENCLOSED DOCUMENTS:

Attachment 1: Property Photographs

Attachment 2: Ordinance for 3506 Elmwood Drive, Alexandria, VA (Lee District)

Attachment 3: Blighted Property Technical Report and Abatement Plan

STAFF:

Robert A. Stalzer, Deputy County Executive

Jeffrey L. Blackford, Director, Department of Code Compliance

Karen McClellan, Operations Manager, Department of Code Compliance

Susan Epstein, Division Supervisor, Department of Code Compliance

Victoria Dzierzek, Code Compliance Investigator III, Department of Code Compliance





**3506 Elmwood Drive – Alexandria  
Tax Map # 082-2 ((13)) 0073  
Lee District  
Attachment 1**





3506 Elmwood Drive – Alexandria  
Tax Map # 082-2 ((13)) 0073  
Lee District  
Attachment 1

**ORDINANCE FOR 3506 ELMWOOD DRIVE  
(LEE DISTRICT)**

WHEREAS, a goal of the Fairfax County Board of Supervisors ("Board") is the preservation and improvement of residential neighborhoods and commercial areas; and

WHEREAS, the Code of Virginia empowers localities, by ordinance to declare any property "spot blight" as defined in the Va. Code Ann. § 36.3 (2014); and

WHEREAS, the Board has approved the implementation of a blight abatement program authorized by State legislation; and

WHEREAS, citizens have expressed concern about specific properties in their communities that are abandoned, dilapidated or otherwise in an unsafe state; and

WHEREAS, it has been determined that the property located at 3506 Elmwood Drive (Lee District) identified on the Fairfax County Tax Map as 082-2 ((13)) 73 ("Property") meets the definition of blight as defined in Va. Code Ann. § 36.3 (2014); and

WHEREAS, the Board desires that the blight be abated in accordance with Va. as authorized by Va. Code Ann. § 36-49.1:1 (2014);

NOW THEREFORE, BE IT RESOLVED, THAT BY ORDINANCE, the Property is deemed blighted as that term is defined in Va. Code Ann. § 36.3 (2014).

BE IT FURTHER RESOLVED; THAT BY ORDINANCE the Board hereby directs that the aforementioned blight be abated in accordance with the terms as authorized by Va. Code Ann. § 36.49.1:1 (2014), including without limitation that if the owner of the Property fails to abate or obviate the nuisance within thirty (30) days, Fairfax County may do so by demolishing the improvements on the Property and removing all debris from the site in which event the County may collect the costs thereof from the owner of the Property in any manner provided by law for the collection of state or local taxes.

Upon certification by the County Executive of Fairfax County or his designee that the blight has been abated and that all expenses of Fairfax County with respect thereto have been paid in full, this Ordinance shall be deemed of no further force or effect.

**PROPERTY ADDRESS (DISTRICT)**

3506 Elmwood Drive (Lee District)

**TAX MAP NUMBER**

082-2 ((13)) 73

**BLIGHTED PROPERTY TECHNICAL REPORT AND ABATEMENT PLAN**

**PROJECT TITLE (OWNERS):** Laura S. Daleski

**CASE:** # 201106467 /SR # 101069

**OWNER'S ADDRESS:** 3506 Elmwood Drive, Alexandria, VA 22303

**ADDRESS OF BLIGHTED PROPERTY:** 3506 Elmwood Drive, Alexandria, VA 22303

**TAX MAP NO.:** 082-2 ((13)) 0073    **MAGISTERIAL DISTRICT:** Lee District

**2015 ASSESSED VALUE:** \$162,000 **LAND:** \$157,000 **IMPROVEMENTS:** \$5,000

**PROPERTY ZONING:** R-4 **YEAR BUILT:** 1950

**TAX STATUS:** Current through June, 2015

**DESCRIPTION:**

Located on the subject property is an abandoned, one story wood frame dwelling that was constructed in 1950. The structure has a partially collapsed roof and due to water infiltration the structural integrity of the dwelling has been jeopardized. The structure was placarded as unsafe under the by the Office of the Fire Marshal, August 29, 2013. The structure was immediately vacated and has remained vacant since. The owner has not submitted a written blight abatement plan and has been unresponsive to remedy the building code violations. BAP staff feels that the dwelling is not economically feasible to repair and recommends demolition.

**IMPACT OF PROPERTY ON SURROUNDING USES:**

The property in its current state is unsafe, and blight on the surrounding community.

**NATURE OF COMPLAINTS:**

The property located at 3506 Elmwood Drive has been the subject of complaints since September, 2011 and was referred to the Blight Abatement Program (BAP) on December 12, 2013 reference its dilapidated condition.

**STAFF RECOMMENDATION:**

BAP recommends demolishing the dilapidated structures and removing all debris on the property in the event that the owners fail to cure the blighted conditions of the property after receiving written notice of the Board's adoption of the Blight Abatement Ordinance. Costs of blight abatement, including direct County administrative costs, would then be collected from the property owner.

Board Agenda Item  
January 12, 2016

4:00 p.m.

Public Hearing on a Proposal to Abandon Part of Sanger Street (Mount Vernon District)

ISSUE:

Public hearing on a proposal to abandon a portion of Sanger Street.

RECOMMENDATION:

The County Executive recommends that the Board adopt the attached order (Attachment III) for abandonment of the subject right-of-way following the public hearing.

TIMING:

On December 8, 2015, the Board authorized the public hearing to consider the proposed vacation and abandonment for January 12, 2016, at 4:00 p.m.

BACKGROUND:

The applicant, Lorton Valley III L.C., is requesting that a portion of Sanger Street be abandoned under §33.2-909 of the Code of Virginia. The subject right-of-way is located on the west side of Interstate 95 south of Lorton Road. Although it is not fully constructed and receives only minimal use, this portion of Sanger Street is still in the Virginia Department of Transportation (VDOT) State Secondary System (Route 747).

The applicant has made the request per the intended requirements of RZ-2011-MV-033, which calls for the relocation of Sanger Street to a new alignment specified on the Conceptual Development Plan; the zoning application has been deferred until the matter of ownership of this right-of-way is settled. The current ownership of the right-of-way is irregular: it is currently held by the Commonwealth Transportation Board (CTB), but carries a Secondary State Highway designation (Route 747). As such the right-of-way was referred to Fairfax County for removal of the Secondary State Highway status by VDOT. Assuming that the abandonment is approved, VDOT has represented that they will proceed to the CTB for sale of the property to the applicant. (The applicant's letter, Attachment I, contains a typographical error, referring to the zoning case as RZ-2011-MV-003.)

Board Agenda Item  
January 12, 2016

In this situation, the effect of the abandonment will be to convert the right-of-way to a parcel held by the CTB which has the authority to convey the property and to ensure that any utility requirements are met.

Traffic Circulation and Access

The abandonment will have no long-term impact on pedestrian, transit, or vehicle circulation and access. There is no development on the adjacent property, and the proposed new Sanger Street alignment will provide future access to the new development.

Easements

Public easement needs have been identified by the Fairfax County Water Authority. Verizon has a service line within the candidate right-of-way. Since the Commonwealth Transportation Board owns the right-of-way these requirements must be transmitted to the CTB for final execution. No other permanent easement needs were identified.

To protect the interests of the public during the transition between the abandonment and the dedication of the future roadway various temporary access easements and a temporary turnaround easement must be provided. The applicant has committed to provide these easements on their property.

The proposal to abandon this right-of-way was circulated to the following public agencies and utility companies for review: Office of the County Attorney, Department of Public Works and Environmental Services, Fairfax County Department of Transportation, Department of Planning and Zoning, Fairfax County Park Authority, Fairfax County Water Authority, Fairfax County School Board, Fire and Rescue, Virginia Department of Transportation, Dominion Virginia Power, Washington Gas Light Company, and Verizon. None of these indicate any opposition to the proposal.

FISCAL IMPACT:

None.

Board Agenda Item  
January 12, 2016

ENCLOSED DOCUMENTS:

Attachment I: Application Letter  
Attachment II: Notice of Intent  
Attachment III: Order of Abandonment  
Attachment IV: Metes and Bounds Description  
Attachment V: Vacation Plat  
Attachment VI: Vicinity Map

STAFF:

Robert A. Stalzer, Deputy County Executive  
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)  
Donald Stephens, FCDOT





**WALSH COLUCCI  
LUBELEY & WALSH PC**

H. Mark Goetzman  
Phone: 703.528.4700 x5452  
Fax: 703.528.6050  
mgoetzman@thelandlawyers.com

July 31, 2014

**BY OVERNIGHT DELIVERY**

Donald Stephens  
Fairfax County Department of Transportation  
4050 Legato Road, Suite 400  
Fairfax, VA 22033-2895

Re: Request for Proposed Abandonment of a Portion of Sanger  
Street, adjacent to the Property of Lorton Valley III L.C., Mt.  
Vernon Magisterial District, Fairfax County, Virginia

Dear Donald:

This letter constitutes a request and statement of justification to abandon a portion of Sanger Street, Route 747, Fairfax County, Virginia (the "Abandoned Area"), located in the Mount Vernon Magisterial District. This request is made on behalf of Lorton Valley III L.C. (the "Applicant") pursuant to Virginia Code Section 33.2-909. The Applicant is the owner of Parcel B, Lorton Valley III LC Property, Fairfax County Tax Map #107-4-01-0098 (the "Lorton Property"), the property adjacent to the Abandoned Area.

The Applicant is currently processing a rezoning and final development plan for the Lorton Property with Fairfax County, identified as RZ/FDP 2011-MV-003 Lorton Valley III, LC-Giles Overlook (the "Rezoning"), to allow 31 single-family detached homes on the Lorton Property. The Rezoning includes the area to be abandoned as shown on the plat entitled "Plat Showing Abandonment of a Portion of Sanger Street Virginia State Route 747" prepared by Urban, Ltd., dated March 27, 2014, and attached hereto. The total area to be abandoned is 48,401 square feet or 1.1111 acres.

The Abandoned Area was conveyed to the Commonwealth of Virginia ("VDOT") by virtue of a Deed and Plat recorded in Deed Book 731 at page 8, among the land records of Fairfax County, Virginia. The Abandoned Area is improved but is no longer necessary, as a new portion of Sanger Street is being dedicated over the Lorton Property. Access will be provided from a cul-de-sac to be constructed on the Lorton Property which adjoins the portion of Sanger Street not being abandoned. Following the abandonment, VDOT will be in a position to declare the Abandoned Area as surplus property and convey the Abandoned Area to Lorton, the adjacent property owner.

**ATTORNEYS AT LAW**

703 528 4700 • WWW.THELANDLAWYERS.COM  
2200 CLARENDON BLVD. • SUITE 1300 • ARLINGTON, VA 22201-3359

LOUDOUN 703 337 3633 • WOODBRIDGE 703 680 4664



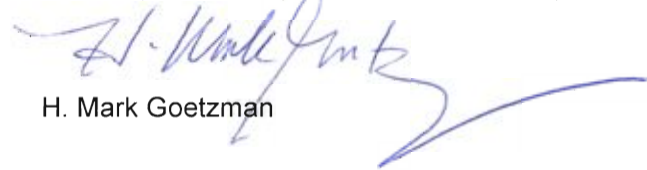
Donald Stephens  
July 31, 2014  
Page 2

I request your review of this application and ask that the matter be scheduled for a public hearing before the Board of Supervisors as soon as possible. As you are aware, per the request of the County and VDOT, the Applicant proceeded with an abandonment under former Virginia Code Section 33.1-151 to be administered entirely by VDOT. That request was formally submitted to VDOT in April. VDOT has only recently changed its position and is requiring abandonment by the Board under 33.2-909 (former Code section 33.1-155). Given this loss of time, anything you can do to expedite this process and get us to the Board in September or early October is greatly appreciated.

If you have any questions regarding the above or require additional information, please do not hesitate to give me a call.

Very truly yours,

WALSH, COLUCCI, LUBELEY & WALSH, P.C.



H. Mark Goetzman

cc: Peter Olechnovich  
Bob Brown  
Kevin O'Connor

HMG/aoh

**NOTICE OF INTENT TO ABANDON**

**A PORTION OF SANGER STREET  
MOUNT VERNON DISTRICT  
Fairfax County, Virginia**

Notice is hereby given that the Board of Supervisors of Fairfax County, Virginia, will hold a public hearing on January 12, 2016, at 4:00 PM during its regular meeting in the Board Auditorium of the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, VA, pursuant to Virginia Code Ann. § 15.2-2204 on the proposed abandonment of a portion of a public road known as Sanger Street (Route 747), pursuant to Virginia Code §33.2-909 along a portion of the northeast properties at Tax Maps 107-4-01-0098, 107-4-01-0084, 107-4-01-0083, and 107-4-01-0082. That portion of the road, consisting of 91,242 square feet, is located on Tax Map 107-4, and is described and shown on the plat dated March 27, 2014, and on the metes and bounds schedule, each prepared by Urban, Ltd., both of which are on file with the Fairfax County Department of Transportation, 4050 Legato Road, 4th Floor, Fairfax, Virginia 22033, telephone no. (703) 877-5600.

MOUNT VERNON DISTRICT  
§33.2-909

**ORDER OF ABANDONMENT OF**

**A PORTION OF SANGER STREET  
MOUNT VERNON DISTRICT  
Fairfax County, Virginia**

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held this 12th day of January, 2016, it was duly moved and seconded that:

WHEREAS, after conducting a public hearing pursuant to notice as required by Virginia Code §33.2-909, and after giving due consideration to the historic value, if any, of such road, the Board has determined that no public necessity exists for continuance of this portion of the road as a public road, and that the safety and welfare of the public will be served best by an abandonment,

WHEREFORE, BE IT ORDERED:

That the portion of Sanger Street (Route 747) comprising a total area of 91,242 square feet, running southwest along the northeast property line at Tax Map 107-4-01-0098, located on Tax Map 107-4 and shown on the plat dated March 27, 2014, and metes and bounds description, each prepared by Urban, Ltd., and attached hereto and incorporated herein, is hereby abandoned as a public road pursuant to Virginia Code §33.2-909.

This abandonment is subject to any right, privilege, permit, license or easement in favor of any public service company, utility, or other person or entity, including any political subdivision, whether located above, upon, or under the surface, either presently in use or of record, including the right to operate, maintain, replace, alter, extend, increase or decrease in size any facilities in the abandoned roadway, without any permission of the landowner(s).

A Copy Teste:

By: Catherine A. Chianese  
Clerk to the Board

§33.2-909



**Description of  
Abandonment of Portion of  
Sanger Street, Virginia State Route 747  
Fairfax County, Virginia**

Beginning at a point on the most southerly corner of the land of INOVA Health Care Services, as recorded in Deed Book 18338 at Page 498 among the land records of Fairfax County, Virginia; Said point also being on the easterly right-of-way line of Interstate 95, a variable width right-of-way; Thence departing the land of said INOVA Health Care Services and running with the easterly right-of-way line of said Interstate 95;

South 08°04'16" West a distance of 567.47 feet to a point;

South 07°56'07" West a distance of 598.14 feet to a point on the most westerly corner of the land of Lorton Valley III, LLC, as recorded in Deed Book 13119 at Page 1181 among the land records of Fairfax County, Virginia; Thence departing the easterly right-of-way line of said Interstate 95 and running with the land of said Lorton Valley III, LLC;

South 78°54'34" West a distance of 140.40 feet to a point;

South 74°57'58" West a distance of 84.93 feet to a point;

North 15°02'02" West a distance of 60.00 feet to a point;

North 74°57'58" East a distance of 83.67 feet to a point;

188.26 feet along the arc of a tangent curve to the left having a radius of 161.00 feet and subtended by a chord bearing North 41°27'58" East a distance of 177.72 feet to a point;

North 07°57'58" East a distance of 802.00 feet to a point on the westerly line of the land of Maria L. Selig, Trustee, as recorded in Deed Book 20370 at Page 263 among the land records of Fairfax County, Virginia; Thence running with the land of said Maria L. Selig, Trustee;

183.12 feet along the arc of a tangent curve to the left having a radius of 352.00 feet and subtended by a chord bearing North 06°56'14" West a distance of 181.06 feet to a point;

North 21°50'26" West a distance of 34.88 feet to a point; Thence departing the land of said Maria L. Selig, Trustee and running through the right-of-way of Sanger Street, Virginia State Route 747, a variable width right-of-way;



169.83 feet along the arc of a non-tangent curve to the left having a radius of 224.00 feet and subtended by a chord bearing North 02°50'02" West a distance of 165.79 feet to a point;

North 65°26'45" East a distance of 1.88 feet to a point on the westerly line of the land of the aforementioned INOVA Health Care Services; Thence running with the land of said INOVA Health Care Services;

North 68°09'34" East a distance of 4.12 feet to a point;

South 21°50'26" East a distance of 190.06 feet to a point;

South 82°19'40" East a distance of 55.27 feet to the point of beginning and containing an area of 91,242 square feet or 2.0945 acres, more or less.

# NOTES

- THE PROPERTIES DEMONSTRATED HEREON ARE LOCATED ON FAIRFAX COUNTY TAX MAPS #107-4-01-0082, 107-4-01-0084, 107-4-01-0085, AND 107-4-01-0086.

TOTAL AREA OF ABANDONMENT

# AREA TABULATION

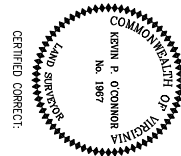
91,242 S.F. OR 2.0945 ACRES

## LINE DATA

LINE	BEARING	DISTANCE
L1	N 82°19'40" W	45.27'
L2	S 21°50'26" E	190.06'
L3	N 68°09'34" E	4.12'
L4	S 80°51'50" E	201.58'
L5	S 65°28'45" W	1.88'

## CURVE DATA

CURVE	RADIUS	ARC LENGTH	CHORD BEARING	CHORD LENGTH	DELTA ANGLE	TANGENT
C1	161.00'	188.26'	S 41°27'58" W	177.72'	66°59'54"	106.56'
C2	549.00'	118.26'	N 33°39'53" W	118.03'	12°20'30"	59.36'
C3	352.00'	183.12'	N 08°56'14" W	181.08'	29°48'21"	93.68'



KEVIN P. O'CONNOR LS #1987

## VICINITY MAP

SCALE: 1" = 1000'



PLAT SHOWING  
ABANDONMENT  
OF A PORTION OF  
SANGER STREET  
VIRGINIA STATE ROUTE 747  
MOUNT VERNON DISTRICT  
FAIRFAX COUNTY, VIRGINIA  
SCALE: 1" = 100'  
DATE: MARCH 27, 2014

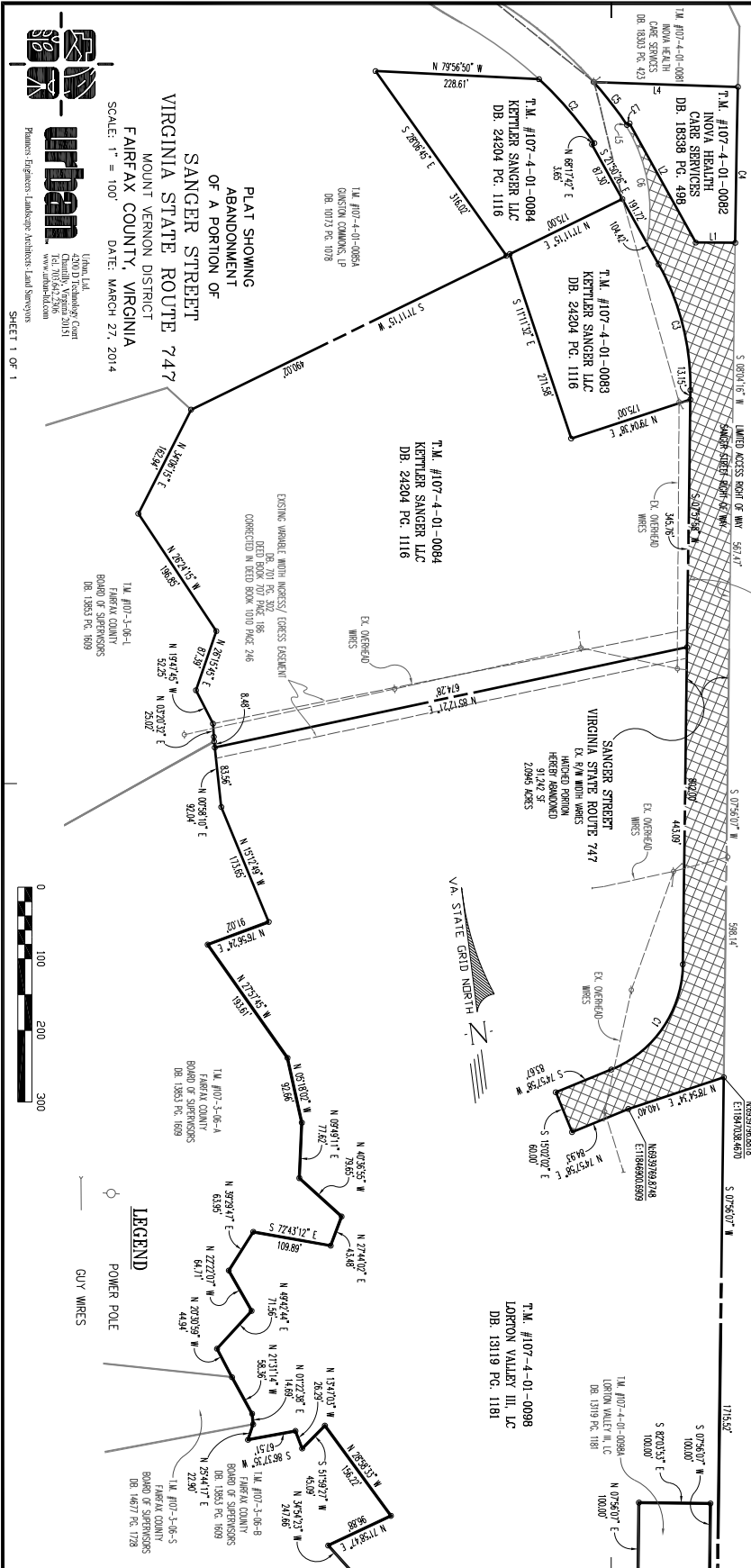
Urban Ltd.  
2000 Technology Center  
Suite 200  
Falls Church, VA 22044  
Tel: 703.642.2966  
www.urban-llc.com

Planners Engineers Landscape Architects Land Surveyors  
SHEET 1 OF 1

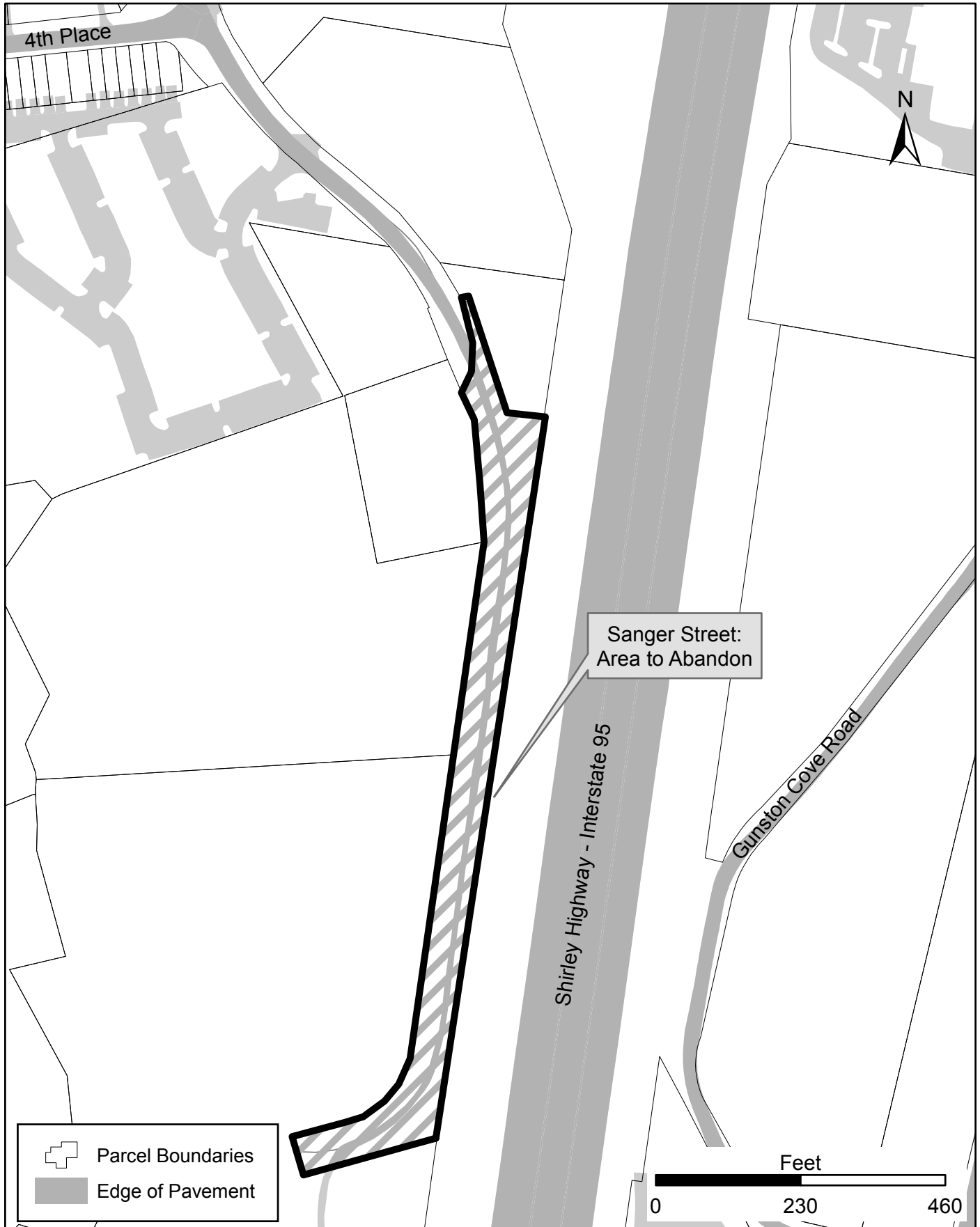


## LEGEND

POWER POLE  
GUY WIRES



Vicinity Map - Tax Map 107-4



4:00 p.m. -

Public Hearing on Revisions to County's Three Retirement System Ordinances

ISSUE:

Public Hearing on amendments to Articles 2, 3, and 7 of Chapter 3, County Employees with housekeeping revisions to the county's three retirement ordinances.

RECOMMENDATION:

The Boards of Trustees of the Employee's, Uniformed and Police Officers Retirement Systems recommend that the Board of Supervisors adopt amendments to Chapter 3 of the County Code.

TIMING:

Board action is requested on January 12, 2016. The advertisement of the public hearing was authorized on December 8, 2015.

BACKGROUND:

The county must apply every five years for determination letters from the Internal Revenue Service (IRS) that its three retirement systems continue to meet the criteria for tax-exempt status. The next application is due January 31, 2016.

In reviewing the three ordinances in anticipation of their submission to the IRS, it was determined that it would be beneficial to make them (1) more stylistically consistent and logically organized, (2) harmonize with each other as much as possible under the law, (3) more reflective of current operating practices and (4) free of any provisions no longer serving a useful purpose.

Revisions of the ordinances to accomplish these purposes are housekeeping in nature and reflect no substantive changes to rules or process. Highlights of these revisions, which are fully set forth in the attachments, are as follows:

- Capitalize the term "County" throughout the ordinances;
- Update citations to the *Code of Virginia* made in the ordinances;
- Provide that members of the Boards of Trustees for the three Retirement Systems are subject to the State and Local Government Conflict of Interests Act;



Board Agenda Item  
January 12, 2016

- Expressly allow an ex-officio Trustee, such as the Director of Finance or Human Resources, to send a permanent designee in their place to Board of Trustee meetings when necessary due to scheduling or other considerations, as has been done in practice; and
- Remove a duplicate definition of the term “social security breakpoint” from the Uniformed Retirement System ordinance.

Prior to this meeting, employee group representatives were advised of the proposed revisions. In addition, the Office of the County Attorney (OCA) met with the Boards of Trustees for the three Retirement Systems to discuss the proposed revisions and answer any questions. Finally, the Board’s Personnel and Reorganization Committee considered the amendments at its meeting on November 23, 2015.

FISCAL IMPACT:

There is no actuarial cost and no fiscal impact associated with these changes.

ENCLOSED DOCUMENTS:

Attachment 1: Fairfax County Code, Sections 2

Attachment 2: Fairfax County Code, Sections 3

Attachment 3: Fairfax County Code, Sections 7

STAFF:

Joseph Mondoro, Chief Financial Officer

Susan Woodruff, Director, Human Resources

Jeffrey Weiler, Executive Director to the Retirement Boards

Benjamin R. Jacewicz, Assistant County Attorney

## ARTICLE 2. - Fairfax County Employees' Retirement System

### Division 1. - Generally.

#### Section 3-2-1. ~~Definitions.~~ Fairfax County Employees' Retirement System established.

Under the authority of Section 51.1-801 of the Code of Virginia, there is hereby established a retirement system for employees, formerly known as the Fairfax County Supplemental Retirement System, to be known henceforth as the "Fairfax County Employees' Retirement System," by and in which name it shall, pursuant to the provisions of this Article, transact all of the System's business. The Fairfax County Employees' Retirement System is intended to satisfy the requirements of Sections 401(a) and 414(d) of the Internal Revenue Code for qualified governmental pension plans. (20-81-3; 10-01-3; 50-13-3.)

#### Section 3-2-2. - Definitions.

~~For the purposes of this Article~~ Unless provided otherwise in another Section, the following ~~words and phrases shall have the meanings respectively ascribed to them by~~ definitions shall apply to this ~~Section~~ Article:

(a) Accrued sick leave credit shall mean:

- (1) For employees whose ~~county~~ County or ~~school board~~ School Board employment commenced by reporting for work before January 1, 2013 (members of Plans A or B), ~~accrued sick leave credit shall mean~~ the credit allowed a member with more than five (5) years of service for purposes of determining retirement eligibility. Credit shall be allowed at the rate of one (1) month for every one-hundred-seventy-two (172) hours of accrued unused sick leave, and pro rata credit shall be allowed for each fraction thereof.
  - (2) For employees whose ~~county~~ County or ~~school board~~ School Board employment commenced by reporting for work on or after January 1, 2013 (members of Plans C or D), ~~accrued sick leave credit shall mean~~ the credit allowed a member with more than five (5) years of service for purposes of determining retirement eligibility. Credit shall be allowed at the rate of one (1) month for every one-hundred-seventy-two (172) hours of accrued unused sick leave, and pro rata credit shall be allowed for each fraction thereof; however, for employees whose ~~county~~ County or ~~school board~~ School Board employment commenced by reporting to work on or after January 1, 2013, notwithstanding the amount of the employee's accrued sick leave balance, the maximum amount of accrued sick leave credit that may be used for determining retirement eligibility and for computing the member's retirement ~~benefits and~~ allowances and benefits shall be the employee's accrued sick leave balance or two-thousand-eighty (2,080) hours, whichever is less.
- (b) *Accumulated contributions* shall mean the sum of all amounts deducted or picked up from the compensation of a member and credited to his or her individual account in the members' contribution account, any amounts transferred from another retirement plan pursuant to Section 3-2-24.1, together with interest credited on such amounts and any other amounts he or she shall have contributed, or transferred thereto, as provided in Section 3-2-28(c).
- (c) *Actuarial equivalent* shall mean a benefit of equal value when computed upon the basis of ~~the 1974 Group Annuity Mortality Table for Females and an interest rate of five percent~~ such actuarial tables as are adopted by the Board.
- (d) *Average final compensation* shall mean the average annual creditable compensation of a member during the thirty-six (36) consecutive months (seventy-eight (78)) consecutive pay periods for

members who are paid on a biweekly basis) in which the member received his or her highest creditable compensation.

- (1) In the event that a member's creditable service is less than thirty-six (36) months (seventy-eight (78) pay periods), his or her average final compensation shall be his or her average monthly creditable compensation received during the entire period of creditable service multiplied by twelve (12) (average biweekly creditable compensation multiplied by twenty-six (26) for biweekly paid members).
- (2) In determining average final compensation for members who retire after July 1, 1988, the member's accrued unused sick leave at the time of retirement may, at the option of the member, be substituted for an equivalent period of creditable service as if the member had continued to work at his or her final salary during the period of his or her accrued unused sick leave; provided, ~~however,~~ that in determining the average final compensation for members who became members of ~~this~~ the System on or after January 1, 2013 (~~i.e.,~~ members of Plans C or D), no more than two-thousand-eighty (2,080) hours of the member's accrued unused sick leave may be used for this purpose.
- (3) For purposes of computing a service-connected disability retirement allowance under Section 3-2-36, a member's average final compensation shall be computed as if ~~the~~ a member had received compensation (including salary increases which the Board determines would have been awarded to the member) for any period prior to retirement during which the member ceased employment on account of a disability for which he or she received compensation benefits under the Virginia ~~Worker's~~ Workers' Compensation Act.
- (4) Notwithstanding the foregoing, whenever the Director of the Department of Human Resources ~~Director~~, at the request of the Board, the member, or the member's beneficiary, determines that the member's receipt of a merit increment was delayed as a result of either or both of the amendments to Section 4.3-2 of the Personnel Regulations, effective July 13, 1991, and July 11, 1992, respectively, and that the member would otherwise have been entitled to such merit increment under the Personnel Regulations, based upon ~~his or her~~ the Human Resources Director's review of the member's County personnel and payroll records, the Board shall calculate the member's average final compensation in a manner which approximates the average final compensation the member would have if the member had received the merit increment at the time he or she would have been entitled to receive such merit increment but for the aforesaid amendments to Section 4.3-2 of the Personnel Regulations. In performing such calculation, the Board shall utilize the following assumptions ~~and procedures~~:
  - (4A) If the employee was scheduled to receive a merit increment in ~~Fiscal~~ fiscal years 1992 and or 1993, ~~it is assumed that~~ then it was delayed.
  - (2B) The employee received no promotions, demotions, reclassifications or regades from the date of the delayed merit increment(s).
  - (3C) The employee moved through the steps of the pay grade as quickly as possible according to his or her respective pay plan.
  - (4D) The delayed merit increments and all future merit increments occurred on the day and the month which is the same day and month when the employee retires.
  - (5E) The employee is ~~assumed to be~~ in full employment each year if in full employment at the time of the delayed merit increment and also at the time of retirement.

(6) — A factor shall be derived utilizing these assumptions ~~(1) through (5)~~, and ~~said factor shall be~~ then used to calculate the increase, if any, in the member's final average compensation. If at the time of retirement, the employee has service credit for three (3) years or more at the longevity step of the pay grade in which his or her position falls, then there shall be no adjustment to the member's average final compensation. This ~~amendment~~ rule shall apply to all applications for allowances and benefits filed with the ~~respective Boards of Trustees~~ Board on or after July 13, 1991. The ~~respective Boards of Trustees are~~

~~hereby authorized and directed to~~ Board shall make any necessary retroactive adjustments to allowances and benefits.

- (5) Notwithstanding the foregoing, in the case of any SESRP member, creditable compensation for each year after the effective date of the agreement referenced in ~~Section 3-2-1~~ Subsection (c) shall equal 1.05634 times the SESRP member's unadjusted compensation.
- (46) Periods of leave without pay under the federal Family and Medical Leave Act of 1993 (FMLA) shall be disregarded in determining periods of consecutive months or ~~payroll~~ pay periods in calculating average final compensation.
- (e) *Beneficiary* shall mean any person, other than a member, entitled to receive benefits as provided by the System. The Board shall provide a member with a form on which to designate in writing one or more beneficiaries of the member's benefits upon the member's death. The Board shall maintain any such written designation on file. A designated beneficiary may be changed from time to time by written notice by the member filed with the Board.
- (f) *Board* shall mean the Board of Trustees of the System, as provided for in this Article.
- (g) *Creditable compensation* shall mean the full compensation, including ~~pick-up~~ pick-up contributions, holiday hours worked, administrative emergency leave worked, shift differential paid and civilian roll call hours paid, but excluding all overtime pay except roll call hours paid, earned on or after July 1, 1993, and excluding performance bonuses, and amounts paid upon separation from employment which represent the unused portion of ~~an~~ the employee's accrued annual leave. In cases where the compensation includes maintenance and other prerequisites, the Board shall fix the value of that portion of the compensation not paid in money. Effective for plan years after December 31, 1988, compensation in excess of \$~~200,000.00~~ (200,000.00, as indexed under Section 415(d) of the Internal Revenue Code), shall be disregarded. Notwithstanding the foregoing, effective for members whose ~~county~~ County or ~~school board~~ School Board employment commenced by reporting for work on or after July 1, 1996, compensation in excess of the limit set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded. In determining the compensation of an employee under this ~~plan section definition~~, the rules of Section 415(c)(3) of the Internal Revenue Code shall apply. Effective for plan years on or after January 1, ~~2001~~ 2001, an employee's compensation shall include amounts not includible in gross income by reason of Section 132(f)(4) of the Internal Revenue Code.
- (h) *Creditable service* shall mean the sum of membership service credit, plus prior service credit, plus portability service credit purchased pursuant to Section 3-2-24.1, plus accrued sick leave ~~service~~ credit.
- (i) *DROP* shall mean the Deferred Retirement Option Program, as provided for by Section 3-2-57.
- (j) *Employee* shall mean any person regularly employed in rendering service to the County whose compensation is fully or partially paid directly or indirectly by the County. ~~The term "employee"~~ It shall also include all officers and other persons regularly employed by the School Board who are not eligible for membership in the Virginia Retirement System (VRS).
- (j) *Employer* shall mean the ~~County~~ School Board or an authority in the general County having the power to appoint an employee to office or employment paid directly or indirectly by the County and/or the Board of Trustees of the System.

- (k) Executive Director shall mean the Executive Director of the Fairfax County Retirement Administration Agency.
- (m) Internal Revenue Code shall mean the federal income tax statutes, as they may be amended or superseded from time to time in the future.
- (n) Medical Examining Board shall mean the physician or physicians provided for by Section 3-2-9.
- (lo) Member shall mean any person included in the membership of the System as provided in for by Section 3-2-19.
- (mp) Membership service credit shall mean credit for service rendered while a member of this the System, or as otherwise provided in Section 3-2-23. Service rendered while a member of SESRP shall be treated without duplication as service rendered while a member of this the System.
- (n-g) Normal retirement date shall mean:
- (1) For employees whose ~~county~~County or ~~school board~~School Board employment commenced by reporting for work before January 1, 2013 (members of Plans A and B), ~~normal retirement date shall mean~~
    - (A) The date on which a member in service attains the age of ~~50~~fifty (50) years, provided said member's age while in service, combined with the years of his or her creditable service, equals at least the sum of ~~eighty~~ (80) years; or
    - (B) The date on which a member attains the age of ~~65~~sixty-five (65) years.
  - (2) For employees whose ~~county~~County or ~~school board~~School Board employment commenced by reporting for work on or after January 1, 2013 (members of Plans C and D), ~~normal retirement date shall mean~~
    - (A) The date on which a member in service attains the age of ~~55~~fifty-five (55) years, provided said member's age while in service, combined with the years of his or her creditable service, equals at least the sum of ~~eighty-five~~ (85) years; or
    - (B) The date on which a member attains the age of ~~65~~sixty-five (65) years.
- (or) ~~Pickup~~Pick-up contributions shall mean a member's regular ~~member's~~ contributions which are is picked up, through a salary reduction, by the County from ~~active members~~the member's compensation for service rendered on or after December 22, 1984.
- (ps) Plan A shall mean the option effective July 1, 1981, available to employees whose ~~county~~County or ~~school board~~School Board employment commenced by reporting for work on or before December 31, 2012, providing for current and new members to:
- (1) Contribute four percent (4%) of compensation up to the taxable wage base and five ~~and~~ ~~one-third~~ percent (5 1/3%) of compensation in excess of the taxable wage base; and
  - (2) Receive normal (and early) service retirement benefits based on one ~~and~~ ~~eight-tenths~~ percent (1.8%) of average final compensation up to ~~his Social Security~~the social security breakpoint plus two (2%) percent of ~~his~~average final compensation in excess of ~~his Social Security~~the social security breakpoint times years of service.

(qt) *Plan B* shall mean the option effective July 1, 1981, available to employees whose ~~county~~County or ~~school board~~School Board employment commenced by reporting for work on or before December 31, 2012, providing for current and new members to:

- (1) Contribute five ~~and~~ one-third percent (5 1/3%) of all compensation; and
- (2) Receive normal (and early) service retirement benefits based on two percent (2%) of the average final compensation times years of service.

(ru) *Plan C* shall mean the option effective beginning on January 1, 2013, providing for current and new members to:

- (1) Contribute four percent (4%) of compensation up to the taxable wage base and five ~~and~~ one-third percent (5 1/3%) of compensation in excess of the taxable wage base; and
- (2) Receive normal (and early) service retirement benefits based on one ~~and~~ eight-tenths percent (1.8%) of average final compensation up to ~~his Social Security~~the social security breakpoint plus two percent (2%) of ~~his~~ average final compensation in excess of ~~his Social Security~~the social security breakpoint times years of service;

subject to the definitions, terms and conditions applicable to Plan C set forth herein.

(sv) *Plan D* shall mean the option effective beginning on January 1, 2013, providing for current and new members to:

- (1) Contribute five ~~and~~ one-third percent (5 1/3%) of all compensation; and
- (2) Receive normal (and early) retirement benefits based on two percent (2%) of the average final compensation times years of service;

subject to the definitions, terms and conditions applicable to Plan D set forth herein.

(tw) Primary social security benefit shall mean the primary insurance amount to which the member is entitled, for old age or disability, as the case may be, pursuant to the federal Social Security Act as in effect at his or her date of retirement, under the provisions of this Chapter, except as otherwise specifically provided.

(x) *Prior service credit* shall mean credit for service rendered prior to the establishment of the Fairfax County Supplemental Retirement System (the predecessor of this System) on July 1, 1955, as provided in Section 3-2-24.

(uy) *Retirement allowance* shall mean the retirement payments to which a member is entitled as provided in this Article.

(vz) ~~SES~~SRP School Board shall mean the ~~former~~ Fairfax County School Board, a political subdivision of the Commonwealth of Virginia.

(aa) Service shall mean service as an employee for which compensation is paid by the employer, but shall not include time spent on leave without pay.

(bb) SESSRP shall mean the former Fairfax County Senior Executive Service Retirement Plan.

- (wcc) *SESRP member* shall mean an individual who entered into an agreement with the County to participate in SESRP in lieu of further participation in the System and who was either still an active participant in SESRP or still receiving benefits under SESRP on January 1, 1996.
- (x) ~~Service shall mean service as an employee for which compensation is paid by the employer, but shall not include time spent on leave without pay.~~ (dd) Social security shall mean the federal Social Security Act and its programs for old age, survivors and disability insurance and benefits, as applicable.
- (yee) *Social Securitysecurity breakpoint* shall mean the average of the taxable wage base for the thirty-five (35) calendar years ending with the year in which the member attains ~~Social Security~~social security normal retirement age. In determining a member's ~~Social Security's social security~~ breakpoint during any particular plan year, it is assumed that the taxable wage in effect at the beginning of the plan year ~~will~~shall remain the same for all future years.
- (zff) *System* shall mean the Fairfax County Employees' ~~Retirement System provided for in Section 3-2-2.~~ Retirement System. When any part of this Article refers to multiple retirement systems, the Employees' Retirement System shall be referred to as "this System," rather than "the System."
- (aagg) *Taxable wage base* shall mean the maximum amount of wages received during the calendar year on which ~~Social Security~~social security taxes are payable by ~~the~~a member and by the employer, as such amount is defined in Section 3121(a) of the Internal Revenue Code, ~~or as that Section may be amended or superseded from time to time in the future.~~
- ~~(bb) Executive Director shall mean the Executive Director of the Fairfax County Retirement Administration Agency. (cc) Internal Revenue Code shall mean the federal income tax statutes. (20-81-3; 5-85-3; 28-89-3; 27-90-3, § 1; 15-93-3; 22-93-3; 37-94-3; 25-95-3; 27-97-3; 14-00-3; 10-01-3; 18-01-3; 8-03-3; 8-04-3; 26-12-3.)~~

~~Section 3-2-2. Fairfax County Employees' Retirement System Established.~~ 2.1. - Definitions elsewhere in County Code and in County Personnel Regulations.

~~Under the authority of Virginia Code, Section 51.1-801, there is hereby established a retirement system for employees, formerly known as the Fairfax County Supplemental Retirement system, to be known henceforth as the "Fairfax County Employees' Retirement system," by and in which name it shall, pursuant to the provisions of this Article, transact all of its business. The Fairfax County Employees' Retirement System is intended to satisfy Internal Revenue Code §§ 401(a) and 414(d) requirements for qualified governmental pension plans. (20-81-3; 10-01-3; 50-13-3.)~~

Unless this Article provides otherwise, the definitions provided in Sections 1-1-2, 3-3-1, and 3-3-12 of the Code of the County of Fairfax, and Chapter 2 of the Fairfax County Personnel Regulations shall apply herein.

Section 3-2-3. - Duties of the employer.

The employer shall keep all necessary records relating to the hiring and employment of members and from time to time shall furnish such information as the Board may require in the discharge of its duties. Upon employment of a member, the employer shall inform the member of his or her duties and obligations in connection with the System as a condition of employment. (20-81-3.)

Section 3-2-4. - ~~Acceptance of employment deemed consent~~Consent to provisions of Article required for employment.



By and upon acceptance of employment, every member shall be deemed to consent and agree to any deductions or employer ~~pick up~~pick-up of amounts from his or her compensation required by this Article and to all other provisions thereof. (20-81-3; 5-85-3.)

Section 3-2-5. ~~Protection against fraud and deceit.~~

- (a) ~~Any~~In addition to any other provisions of law, any person who shall knowingly make any false statement<sub>s</sub> or shall falsify or permit to be falsified<sub>s</sub> any record or records of the System in any attempt to defraud the System shall be guilty of a misdemeanor and shall be punished accordingly.
- (b) Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of the System in an attempt to defraud the System shall forfeit all rights to the ~~benefit or retirement~~ allowance or benefit obtained by such misrepresentation. Making a false statement or falsifying or permitting to be falsified any record of ~~this the~~ System<sub>s</sub> in an attempt to defraud the System shall constitute grounds for dismissal from service.
- (c) Whenever the Board shall find, after notice and hearing, that a person has obtained a ~~benefit or retirement~~ allowance or benefit from ~~this the~~ System by false statement or falsification of record, it shall immediately terminate the ~~benefit or~~ allowance or benefit if the entire ~~benefit or~~ allowance or benefit was obtained by such misrepresentation or the additional amount of the ~~benefit or~~ allowance or benefit so obtained by such misrepresentation. Any ~~benefit or~~ allowance or benefit or additional amount of ~~a benefit or an~~ allowance or benefit obtained by false statement or falsification of a record shall be deemed to be an overpayment<sub>s</sub> and the Board shall take all necessary legal and administrative steps to recover the overpayment.
- (d) The Board shall adopt rules and regulations pursuant to Section 3-2-15 ~~of this Article~~ to implement the provisions of this ~~section~~Section; provided, ~~however~~, that the failure of the Board to do so shall not prevent the implementation of the sanctions called for by this Section. A final judgment of conviction by a court of competent jurisdiction in a prosecution under Subsection (a) of this Section shall be prima facie evidence of fraud under Subsections (b) and (c) of this Section; provided, ~~however~~, that a conviction under Subsection (a) of this Section shall not be a prerequisite for action by the Board under Subsections (b) or (c) of this Section. The remedies provided the System under this Section are in addition and supplemental to any other remedies it may have under law. (20-81-3; 27-90-3, § 1.)

Section 3-2-6. - ~~Assignment of benefits prohibited; benefits~~Benefits unassignable; non-attachable.

The right of any member to a retirement allowance, to the return of accumulated contributions or any other right accrued or accruing to any person under ~~the provisions of~~ this Article and the money covered by this Article shall not be subject to execution, garnishment or attachment, and to the extent permitted by law, the operation of bankruptcy or insolvency law or any other process of law whatsoever except for administrative actions pursuant to ~~Chapter 13 (§ 63.1-249)~~Section 63.2-1900 et seq. ~~of Title 63.1~~ of the *Code of Virginia* or any court process to enforce a child or child and spousal support obligation, and shall be unassignable except as specifically provided in this Article. However, retirement benefits and assets created under this Article which are deemed to be marital property pursuant to ~~Chapter 6 (§ Section 20-89.1 et seq.) of Title 20~~ of the *Code of Virginia* may be divided or transferred by the court by direct assignment to a spouse or former spouse pursuant to Section 20-107.3 of the Code of Virginia, ~~Section 20-107.3~~. (20-81-3; 5-85-3; 13-92-3; 1-93-3.)

Section 3-2-7. - Errors ~~in records; correction and adjustment.~~ resulting in over- or under-payment.



- (a) Should any change or error in the records or in the computation of a member's or beneficiary's benefit or refund result in any member or beneficiary receiving from the System an amount more ("overpayment") or less than he or she would have been entitled to receive had the records or computation error been correct, the Board shall have the power to correct such error and, as far as practicable, to adjust the payments in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid.
- (b) An overpayment shall constitute a debt owed by the recipient to the System and the Board is authorized to use any and all legal ~~and/or~~ action to collect the overpayment and any accrued interest.
- (c) The Board is authorized to enter into written agreements with recipients of overpayments to provide for installment payments to recover the overpayment, the amount of accrued interest, and interest on any unpaid balance.
- (d) The Board is authorized to compromise any disputed overpayment.
- (e) Interest shall accrue on overpayments at the rate or rates established by the Board; provided, ~~however,~~ that no interest shall accrue if the Board has exercised its adjustment authority under Subsection (a) of this Section or under any other circumstances in which the Board, in its discretion, determines that interest shall not accrue. (20-81-3; 27-90-3, § 1.)

Section 3-2-8. - Amendment of Article.

The Board of Supervisors shall have the continuing right and power to amend or supplement this Article at any time, which right and power is hereby expressly reserved. But no amendment shall be made unless an actuarial report has been filed with the Board of Supervisors as to its effect upon the System and no amendment shall be adopted which ~~will~~shall reduce the then accrued benefits of members or beneficiaries below the extent they are then covered by accumulated reserves, which reserves shall constitute a trust fund for the payment of such benefits. At least thirty (30) days prior to the public hearing before the Board of Supervisors on any proposed amendment, the Board of Trustees of the System shall be provided with the text of the proposed amendment to provide it the opportunity to submit its comments on the proposed amendment to the Board of Supervisors; provided, ~~however,~~ this limitation shall not prevent the Board of Supervisors from adopting an emergency amendment under ~~the provisions of Section 15.2-504 of the Code of Virginia Section 15.1-504.~~ (20-81-3; 27-90-3, § 1.)

Section 3-2-9. - Medical Examining Board; ~~members; duties.~~

The Medical Examining Board shall consist of the ~~County~~ Director of the Health ~~Services Department~~ (or his or her designee) and, in the discretion of the Board, one (1) or two (2) other physicians designated by the Board. The duties of the Medical Examining Board shall be to arrange for and pass upon all medical examinations required under this Article or requested by the Board and to investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement. The members of the Medical Examining Board, who may act individually or collectively, shall report in writing to the Board their conclusions and recommendations upon all matters referred to it. (20-81-3; 27-97-3.)

Division 2. - Board of Trustees.

Section 3-2-10. - Administration of System vested in Board of Trustees.

The general administration and the responsibility for the proper operation of the System and for making effective the provisions of this Article are hereby vested in the Board ~~of Trustees of the System~~. The Board in its discretion, may, by rule or regulation adopted under Section 3-2-15(a), delegate authority to the Executive Director to perform certain duties and administrative responsibilities. (20-81-3; 27-90-3, § 1.)

Section 3-2-11. - Membership; term of office.

(a) The Board of Trustees of the System shall consist of ~~ten (10) trustees as follows: The County~~ the following members:

- Director of the Department of Finance, who shall be the Treasurer of the Board, or his or her designee, sitting ex officio; ~~the personnel officer responsible for employee benefits for Fairfax County; the personnel officer responsible for employee benefits of~~
- Director of the Department of Human Resources, or his or her designee, sitting ex officio;
- Assistant Superintendent for Human Resources for the Fairfax County Public Schools, or his or her designee, sitting ex officio; ~~four~~
- Four (4) trustees ~~persons~~ appointed by the Board of Supervisors; ~~two (2) members elected by the County employees who are members of this system: One (1) elected by~~
- One (1) School Board ~~employees and one (1) elected by general County employees; and one (1) trustee who shall be a~~ employee elected by the members of the System;
- One (1) County employee elected by members of the System who are County employees; and
- One (1) retired member elected by ~~the retired members~~ of the System.

Responsibility for the conduct of said elections shall rest with the County Executive.

(b) With the exception of the Director of ~~Finance, the personnel officer responsible for employee benefits for Fairfax County, and the personnel officer responsible for employee benefits for Fairfax County Public Schools, all of whom shall be ex officio members of the Board, the terms of office of the Trustees~~ the Department of Finance, the Director of the Department of Human Resources, and the Assistant Superintendent for Human Resources the term of office of the trustees shall be four (4) years. The only persons eligible to be elected by County or School Board employees to the Board are County or School Board employees; who are members of ~~this system~~ the System, respectively. The office of such trustees shall be vacated should such trustees separate from County or School Board service prior to ~~the~~ completion of their term. (20-81-3; 27-90-3, § 1; 9-91-3; 2-93-3.)

Section 3-2-12. - Vacancies in office.

If a vacancy occurs in the office of a ~~Trustee~~ trustee of the System, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled. (20-81-3.)

Section 3-2-13. - Compensation of ~~Trustees~~ trustees.

Those trustees eligible for compensation under County policy may receive compensation at a rate set by the Board of Supervisors. (20-81-3.)

Section 3-2-14. - Accountable to the Board of Supervisors.

The Board of Trustees of the System shall be accountable to the Board of Supervisors. (20-81-3.)

Section 3-2-15. - Functions of the Board.

- (a) Subject to the limitations of this Article, the Board shall, from time to time, establish rules and regulations for the administration of the ~~system~~System and for the transaction of its business, copies of which shall be made available to interested parties.
- (b) The Board may employ and pay out of the ~~system~~System funds for all services as shall be required.
- (c) The Board shall keep in convenient form such data as shall be necessary for an actuarial valuation of the ~~system~~System and for checking the experience of the ~~system~~System.
- (d) The Board shall keep minutes of all its proceedings. These minutes shall be open to the public for inspection ~~in accordance with the Virginia Freedom of Information Act, except as limited by the Privacy Protection Act of 1976--~~ unless applicable law provides otherwise.
- (e) The Board shall submit to the Board of Supervisors annually an independent audit showing the fiscal transactions of the System for the preceding fiscal year, the amount of accumulated cash and securities of the System, and the last balance sheet indicating the financial condition of the System.
- ~~(e)~~ Beginning on July 1, 1990, the Board shall cause an actuarial valuation to be made of the System annually.
- (g) The Board shall review adverse decisions as provided by Section 3-2-49. (20-81-3; 27-90-3, § 1.)

Division 3. ~~=~~ Management of Funds.

Section 3-2-16. - Board trustee of funds; investment of same.

- (a) The Board shall be the trustees of funds created by this Article and shall have full power to invest and ~~reinvest~~re-invest such funds. Such investments and ~~reinvestments~~re-investments shall be conducted with bona fide discretion and in accordance with the laws of ~~this~~the Commonwealth of Virginia as such laws apply to fiduciaries investing such funds. The Board may, upon the exercise of bona fide discretion, employ investment counsel, who shall be subject to the same limitations herein provided for the Board. Subject to such limitations, the Board shall have full power to hold, purchase, sell, assign, transfer or otherwise dispose of any of the securities or investments in which any of the funds created herein have been invested, as well as the proceeds of such investments and any money belonging to such funds.

~~No member of the Board~~(b) No trustee shall be personally liable for losses suffered by the System on investments made under the authority of and in compliance with this Section. (20-81-3.)

Section 3-2-17. - Treasurer fiscal officer of the Board.

The Treasurer of the Board shall be the custodian of all of its funds and securities or evidences of such when in the custody of a fiduciary agent. He or she shall give bond as a condition for the faithful performance of his or her duties and the proper accounting of all funds and securities coming into his or her hands. He or she shall deposit all money in the name of the Board and disburse the same only on vouchers signed by such person as is designated for the purpose by the Board. (20-81-3.)

Section 3-2-18. - Prohibited interest of member or employee of Board.

(a) The State and Local Government Conflict of Interests Act, Section 2.2-3100 et seq., of the Code of Virginia, shall apply to members and employees of the Board.

~~Except as otherwise provided in this Article, no member or employee of the Board shall have any direct or indirect interest in the gains or profits of any investment held by the system.~~ (b) No member or employee of the Board shall, directly or indirectly, for himself or herself or as an agent in any manner use the funds of the ~~system~~ System, except to make such current and necessary payments as are authorized by the Board. (20-81-3.)

Division 4. - Membership in System.

Section 3-2-19. - ~~Persons comprising membership.~~ Membership composition.

(a) Membership shall be composed of the following:

(a1) All persons who were members of ~~this~~ the System on the effective date of this Article and all SESRP members; provided, ~~however,~~ that benefits under ~~this~~ the System in the case of SESRP members shall be in lieu of, and not in addition to, benefits under SESRP.

(b) 2 Future employees as hereinafter identified, except those listed in ~~Subsections (b)(1), (b)(2), Subparagraphs (A) and (B)(3) of this Section~~ Subsection.

(1) ~~Exceptions for non-School Board County employees.~~ A Employees who are members of the Virginia Retirement System (VRS) and the Educational Employees' Supplemental Retirement System (~~Article 4 of Fairfax County (ERFC)~~), the Fairfax County ~~police officers~~ Police Officers Retirement System (~~Article 7~~), or the Fairfax County Uniformed Retirement System (~~Article 3~~) and employees who are eligible to become members of those systems, are not eligible for membership in this System; provided ~~however,~~ that an employee who is a member of such a system shall be eligible for membership in this ~~system~~ System if he or she elects in writing to withdraw from such system, pursuant to the rules and regulations of this System and of the system of which he or she was previously a member. If the withdrawal from the other system occurs due to being employed in a different position by the same appointing authority, the employee ~~will~~ shall be required to purchase service credit under this System for service rendered while a member of such other system, pursuant to the rules of Section 3-2-23.

If the withdrawal from the other system occurs due to being employed by a different appointing authority, the employee ~~will~~ shall be permitted but not required to purchase service credit under this System for service rendered while a member of such other system, pursuant to the rules of Section 3-2-23. Exempt ~~limited term~~ benefits eligible and exempt ~~part-time~~ temporary employees are not eligible for membership in this System; provided, ~~however,~~ that any such employee who became a member of this System under the provisions of this Article in effect at the time ~~they~~ he or she commenced ~~their~~ his or her service with the County shall continue to be a member.

The following employees who elect, in writing at the time of their initial eligibility not to become members of ~~this~~ the System, ~~not to become members~~ shall be exempted from ~~this~~ the System: ~~Elected~~ elected officials, including constitutional officers and persons appointed to fill vacancies in elective offices, and their appointed deputies or assistants.

(2B) School Board employees who are members of the Virginia Retirement System (VRS) are not eligible for membership in this System. Substitute employees, food service employees whose assigned employment is less than three (3) hours per day, and temporary employees are not eligible for membership in this System.

(3) ~~Certain members of the Uniformed or Police Officers Retirement Systems who are appointed to serve as a deputy county executive. Notwithstanding any other provision of this Chapter or Article to the contrary, an active member of either the Uniformed Retirement System or the Police Officers Retirement System who has more than five years of creditable service in such system and who is appointed to serve as a deputy county executive shall remain a member of the system to which he or she belonged, whether the Uniformed Retirement System or the Police Officers Retirement System, prior to his or her appointment as a deputy county executive, and shall not become a member of this System as a result of such appointment.~~ (e)

— Any employee, otherwise qualified, who elected not to or was unable to become a member of ~~this~~ the System pursuant to any ordinance then in effect; provided, he or she pays into this System all contributions which would have been due from him or her had he or she been a member of ~~this~~ the System during the period of his or her employment, plus interest on such contributions at the rate or rates established by the Board, for each of the years for which membership service credit is sought. Any election to purchase membership service credit under this Subsection through the payment of contributions for a prior period of employment ~~must~~ shall be made within one (1) year after the employee is first eligible to make such an election or by ~~(six months (6) from the effective date of this amendment)~~ [September 17, 1990], whichever is later.

(d) ~~Provisions for the transfer of uniformed b)~~ Uniformed employees of the Department of Animal Control ~~into the membership of~~ transferring to the Fairfax County Uniformed Retirement System ~~(Uniformed System)~~.

(1) Members of this System who were uniformed employees of the Department of Animal Control, including the Director, on or after October 1, 1985, except those eligible to remain in this System pursuant to Subsection ~~3-2-19(d)(2)~~ of this Section, are hereby transferred to membership in the Fairfax County Uniformed Retirement System effective the latter of October 1, 1985, or the date of their appointment.

(2) Those members subject to transfer to the Uniformed Retirement System pursuant to Subsection ~~3-2-19(d)(1)~~ of this Section who as of the date of adoption of this Subsection ~~3-2-19(d)~~ [December 16, 1985] have attained normal retirement age under this System shall continue as members of this System unless within thirty (30) days after the adoption of this Subsection ~~3-2-19(d)~~ they make an irrevocable election in writing to transfer into the Uniformed Retirement System pursuant to ~~the provisions of this subsection~~ Subsection.

(3) Members of this System being transferred to the Uniformed Retirement System pursuant to this Subsection shall, within thirty (30) days of the adoption of this Subsection [December 16, 1985], make an irrevocable election in writing to either waive membership service credit in the Uniformed Retirement System based upon their service in this System or to purchase membership service credit in the Uniformed Retirement System based on their service in this System pursuant to the provisions of Section 3-3-24. Members who fail to make an election shall be deemed to have elected to waive membership service credit.

- (4) Members with five (5) or more creditable years of service with this System who elected to waive membership service credit in the Uniformed Retirement System pursuant to Subsection ~~3-2-19~~(d)(3) of this Section shall make at the same time an irrevocable election in writing whether to receive a refund of their accumulated contributions (with interest), reduced by the amount of any retirement allowances previously received by them under ~~any of the provisions of this Article~~, or to receive a deferred vested benefit from this System mutatis mutandis, under ~~the provisions of Subsection~~ Section 3-2-38(b). Members who fail to make an election shall be deemed to have elected a refund. Members with less than five (5) years of creditable service with this System who elect to waive membership service credit in the Uniformed Retirement System pursuant to Subsection ~~3-2-19~~(d)(3) of this Section shall be refunded their accumulated contributions (with interest) reduced by the amount of any retirement allowances previously received by them under ~~any provisions of~~ this Article.
  - (5) With respect to each member electing to purchase membership service credit in the Uniformed Retirement System pursuant to Subsection ~~3-2-19~~(d)(3) of this Section, the Board shall transfer the funds in the member's contribution account as well as those funds in the retirement allowance account attributable to the member's service to the Board of Trustees of the Uniformed Retirement System, who shall credit such funds to the appropriate accounts of the Uniformed Retirement System.
  - (6) The Board shall transfer to the Board of Trustees of the Uniformed Retirement System any employee or employer contributions received by it attributable to members transferring to the Uniformed Retirement System pursuant to Subsection ~~3-2-19~~(d)(1) or (2) of this Section for service rendered after the effective date of the members' transfer. The Board of Trustees of the Uniformed Retirement System shall credit such funds to the appropriate accounts of the Uniformed Retirement System.
- ~~(e) — Provisions for the transfer of certain~~ c) Certain employees of the Public Safety Communications Center in the job classes of Public Safety Communications Squad Supervisor, Public Safety Communications Assistant Squad Supervisor, Public Safety Communicator III, Public Safety Communicator II, or Public Safety Communicator I ~~into the membership of~~ transferring to the Fairfax County Uniformed Retirement System ~~(Uniformed System). Members of this System who elect to enter DROP on or before September 1, 2005, are not eligible for transfer to the Uniformed System:~~
- (1) Members of this System who are in one of the job classes identified ~~herein~~ in this Subsection, on or before June 30, 2005, shall have the opportunity to transfer to membership in the Fairfax County Uniformed Retirement System, effective the start of the first pay period beginning on or about October 1, 2005.
  - (2) Members of this System who are eligible for transfer to the Uniformed Retirement System pursuant to Subsection ~~3-2-19~~(e)(1) of this Section may elect to maintain their membership in this System and not transfer to the Uniformed Retirement System.
  - (3) Members of this System who are eligible for transfer to the Uniformed Retirement System pursuant to Subsection ~~3-2-19~~(e)(1) of this Section and elect to do so, shall, after the adoption of Subsection ~~3-2-19~~(e) of this Section, on or before September 1, 2005, make an irrevocable election in writing to transfer to the Uniformed Retirement System. Members electing to transfer to the Uniformed Retirement System may elect to transfer to the Uniformed Retirement System but not purchase membership service credit in the Uniformed Retirement System based upon



their service in this System, or may elect to purchase membership service credit in the Uniformed [Retirement](#) System based on their service in this System pursuant to the provisions of Section 3-3-24. Transferring members who fail to make an election shall be deemed to have elected to waive the opportunity to purchase membership service credit in the Uniformed [Retirement](#) System.

- (4) Members with five [\(5\)](#) or more creditable years of service with this System who elect to waive membership service credit in the Uniformed [Retirement](#) System shall make at the same time an irrevocable election in writing whether to receive a refund of their accumulated contributions with interest reduced by the amount of any retirement allowance previously received by them under ~~any provisions of~~ this Article, or to receive a deferred vested benefit from this System mutatis mutandis, under the provisions of ~~Subsection~~[Section](#) 3-2-38(b). Members who fail to make an election shall be deemed to have elected not to receive a deferred vested benefit. Members with less than five [\(5\)](#) years of creditable service with this System who elect to waive membership service credit in the Uniformed [Retirement](#) System pursuant to Subsection ~~3-2-19~~[\(e\)\(3\) of this Section](#) shall be refunded their accumulated contributions [\(with interest\)](#) reduced by the amount of any retirement allowances previously received by them under ~~any provisions of~~ this Article.
- (5) With respect to each member electing to purchase membership service credit in the Uniformed [Retirement](#) System pursuant to Subsection ~~3-2-19~~[\(e\)\(3\) of this Section](#), the Board shall transfer the funds in the member's contribution account as well as those funds in the retirement allowance account attributable to the member's service to the Board of Trustees of the Uniformed [Retirement](#) System, who shall credit such funds to the appropriate accounts of the Uniformed [Retirement](#) System. Members electing to purchase membership service credit in the Uniformed [Retirement](#) System shall have the option of paying to the Board of Trustees of the Uniformed [Retirement](#) System the difference between the employee contributions that would have been required under the Uniformed [Retirement](#) System plus interest, and their employee contributions plus interest to this System for the period for which membership service credit is sought. Members who elect to pay the difference between the employee contributions plus interest that would have been required under the Uniformed [Retirement](#) System and their employee contributions plus interest to this System, shall not be eligible to enter [the](#) DROP under the Uniformed [Retirement](#) System until the entire amount of the difference in employee contributions plus interest has been paid to the Uniformed [Retirement](#) System and the member otherwise meets the eligibility requirements to enter [the](#) DROP under the Uniformed [Retirement](#) System. In lieu of paying the difference between the employee contributions that would have been required under the Uniformed [Retirement](#) System plus interest and their employee contributions plus interest to this System, a member may elect to have the amount of membership service credit transferred to the Uniformed [Retirement](#) System actuarially reduced based on the amount that would have been required.
- (6) The Board shall transfer to the Board of Trustees of the Uniformed [Retirement](#) System any employee or employer contributions received by it attributable to member's transfer to the Uniformed [Retirement](#) System pursuant to Subsection ~~3-2-19~~[\(e\)\(1\) or \(2\) of this Section](#) for service rendered after the effective date of the member's transfer. The Board of Trustees of the Uniformed [Retirement](#) System shall credit such funds to the appropriate accounts of the Uniformed [Retirement](#) System.

~~(f)~~ Members of this System in one of the job classes identified in this Subsection who elect to enter the DROP on or before September 1, 2005, are not eligible for transfer to the Uniformed Retirement System.

(d) Notwithstanding any other provision of this Chapter or Article to the contrary, an active member of either the Fairfax County Uniformed Retirement System or the Fairfax County Police Officers Retirement System who has more than five (5) years of creditable service in such system and who is appointed to serve as a Deputy County Executive shall remain a member of the system to which he or she belonged, whether the Uniformed Retirement System or the Police Officers Retirement System, prior to his or her appointment as a Deputy County Executive, and shall not become a member of this System as a result of such appointment.

(e) Persons receiving a normal or early service retirement allowance from this System, the Fairfax County Uniformed Retirement System ~~(Article 3)~~, or Fairfax County Police Officers Retirement System ~~(Article 7)~~, are eligible for membership only under the terms and conditions set forth in Section 3-2-43. ~~(g) 20-81-3; 34-81-3; 23-85-3; 36-86-3; 14-87-3; 27-90-3, § 1; 45-93-3; 23-05-3; 26-12-3.)~~

#### Section 3-2-19.1. - Interest rates for purchases for membership service credit.

The Board may at any time and from time to time, establish a new interest rate or rates which shall be applicable to purchases of membership service credit under Subsection (c) of ~~this Section. (20-81-3; 34-81-3; 23-85-3; 36-86-3; 14-87-3; 27-90-3, § 1; 45-93-3; 23-05-3; 26-12-3.)~~ 3-2-19.

#### Section 3-2-20. - Cessation of membership.

The membership of any person in the System shall cease:

- (a) If he or she ceases to be an employee for a period of five (5) years, having had less than five (5) years of creditable service on his or her date of separation from the County or School Board; or
- (b) Upon separation and withdrawal of his or her accumulated contributions; or
- (c) If a member, as defined in ~~Subsection~~Section 3-2-19(b)(1) ~~of this Section~~, gives the Board written ~~notification~~notice of his or her withdrawal from the System; or
- (d) Upon death. (20-81-3; 4-81-3.)

#### Division 5. - Service Credit.

#### Section 3-2-21. - Statement to be filed with Board.

Under such rules and regulations as are adopted by the Board, each member or someone on his or her behalf shall file with the Board in such form as the Board may prescribe, a statement of the facts pertaining to his or her status as a member, which shall include a statement of all service rendered as an employee, and such other information as the Board may require. Until such statement is filed, no member or his or her beneficiary shall be eligible to receive any benefits under this Article. (20-81-3.)

#### Section 3-~~27~~-22. - Year of service.



The Board shall determine by appropriate rules and regulations how much service in any year is the equivalent of a year of service, but in no case shall it allow credit for more than one (1) year of service for all service rendered in any period of twelve (12) consecutive months. (20-81-3.)

Section 3-2-23. - Membership service credit.

- (a) Each member shall receive membership service credit for periods in which he or she received compensation and was a member of ~~this~~the System, provided that any former member of ~~this~~the System who ceased his or her ~~county~~County or ~~school board~~School Board employment and withdrew his or her accumulated member contributions from the System may purchase membership service credit by paying into the System all accumulated contributions that would have been collected from him or her during his or her prior period or periods of membership, plus interest at the rate or rates established by the Board, for the entirety of any period of prior service for which membership service credit is sought; a member may not purchase credit for only a portion of any prior period of service, but may only purchase credit for an entire prior period of service. In the event that a member of either Plan A or Plan B who ceased his or her ~~county~~County or ~~school board~~School Board employment and withdrew his or her accumulated member contributions from the System seeks, on or after January 1, 2013, to purchase credit for periods during which he or she received compensation as a member of ~~this~~the System, he or she may only become a member of, and purchase membership service credit in, either Plan C or Plan D, by paying into the System all accumulated contributions which would have been collected from him or her during his or her prior period or periods of membership, plus interest at the rate or rates established by the Board, for the entirety of any period of prior service for which membership service credit is sought; however, notwithstanding the foregoing, a member of any of the four Plans (A, B, C or D) that are part of the ~~Employees' Retirement~~ System who ceased his or her ~~county~~County or ~~school board~~School Board employment, but who left his or her accumulated member contributions in the System, ~~must~~shall, upon his or her return to ~~county~~County or ~~school board~~School Board employment, rejoin the Plan to which he or she formerly belonged. Such member may satisfy some or all of the amount due from ~~him~~him or her for the purchase of such service through a rollover from an individual retirement account if ~~and only if~~ the entire amount in that account is attributable to a rollover from ~~this~~the System. Such member may also satisfy some or all of the amount due from him or her for the purchase of such service through a direct trustee-to-trustee transfer from an eligible deferred compensation plan described in ~~section~~Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in ~~section~~Section 457(e)(1)(A) ~~of the Internal Revenue Code~~, or through a direct trustee-to-trustee transfer from an annuity contract described in ~~section~~Section 403(b) of the Internal Revenue Code.
- (b) Members in service shall also receive membership service credit for periods of service-connected disability retirement from ~~this~~the System.
- (c) Members whose service is terminated to enter into the armed forces of the United States and who subsequently return to service ~~in this System~~ shall be granted membership service credit for the period of their service in the armed forces of the United States to the extent required under ~~the provisions of~~ federal and state law.
- (d) A member who transfers from a position in the service of the Fairfax County Public Schools (~~Schools~~FCPS) in which he ~~or she~~ was a member of the Virginia Retirement System (VRS) and the Educational Employees' Supplemental Retirement System of Fairfax County (~~ER-FCERFC~~) to a position in the County service shall receive membership service credit for periods that he ~~or she~~ had been employed by ~~the Schools~~FCPS and was a member of VRS and ~~the ER-FCERFC~~, if such

service ~~will~~shall not be considered in the calculation of any ~~benefit or retirement~~ allowance or benefit from VRS or ~~ER-FC~~ERFC, and if such member pays into this System all contributions that would have been due from him or her had he or she been a member of this System, plus interest at the rate or rates established by the Board, for each of the years for which membership service credit is sought.

- (e) The Board may at any time, and from time to time, establish a new interest rate or rates which shall be applicable to Subsections (a) and (d) of this Section. Any election to purchase membership service credit under Subsections (a) or (d) of this Section may be made at any time by a member of the System while in service. The Board may enter into agreements with members purchasing membership service credit under the provisions of Subsections (a) and (d) of this Section to pay the member contributions due from them in installments, provided that such members shall not be entitled to such membership service credit until all payments under such agreements have been made.

- (f) (1) Under such rules and regulations as are adopted by the Board, any employee who has been a member of the Virginia Retirement System (VRS) and the Educational Employees' Supplemental Retirement System (~~Article 4 of Fairfax County (ERFC)~~), the Fairfax County Police Officers Retirement System (~~Article 7~~), or the Fairfax County Uniformed Retirement System (~~Article 3~~), and who withdraws therefrom and becomes a member of this System, may purchase membership service credit for service rendered while a member of such other system by paying into this System all contributions that would have been due from him or her had he or she been a member of this System for each of the years for which membership service credit is ~~subject~~sought. (A member may purchase membership service credit for prior service while a member of ~~the Virginia Retirement System~~VRS only for service due to employment by the Fairfax County Public Schools (FCPS).)

- (2) The amount due from a member for such purchase of membership service credit ~~must~~shall be satisfied, to the extent possible, (a) by directing the trustees of the system from which he or she is withdrawing to transfer his or her accumulated member contributions in such system directly to this System, without distribution to such employee, if such transfers are available under such system, or (b) through (i) a rollover from the system from which he or she is withdrawing (if the member would be eligible for a refund from such system), (ii) a rollover from an individual retirement account in which all contributions were derived from a rollover from ~~a~~such system, or (iii) a direct trustee-to-trustee transfer from an eligible deferred compensation plan described in ~~section~~Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in ~~section~~Section 457(e)(1)(A) ~~of the Internal Revenue Code~~, or through a direct trustee-to-trustee transfer from an annuity contract described in ~~section~~Section 403(b) of the Internal Revenue Code. To the extent that a rollover or direct transfer permitted under this ~~Section 3-2-23~~Subsection is insufficient to purchase the necessary membership service credit, other arrangements permitted by the rules and regulations adopted by the Board shall be made for purchasing such membership service credit. (20-81-3; 5-85-3; 27-90-3, § 1; 45-93-3; 36-94-3; 7-00-3; 10-01-3; 8-03-3; 26-12-3.)

Section 3-2-24. ~~-Credit for prior-~~ Prior service credit.

- (a) Prior service credit may be granted to persons who were members of the Fairfax County Supplemental Retirement System on July 1, 1955, or who were employees who ~~had~~ previously left service to enter directly into the armed forces of the United States and who were still in the armed forces on or after that date as provided in Subsection (b) of this Section.

- (b) Each member shall receive membership service credit for military leave, provided he or she returns to full employment within ninety (90) days of discharge and such discharge is other than dishonorable. This ~~amendment~~Subsection shall be applied retroactively to January 1, 2003. (20-81-3; 27-90-3, § 1; 30-09-3.)

Section 3-2-24.1. ~~=~~ Portability ~~of~~ service credit.

- (Aa) Definitions. ~~For the purpose of this section, these terms shall be defined as follows:~~

- (1) ~~"~~ *Accepting plan* ~~"~~ shall mean the retirement plan or system which is receiving membership assets from another ~~defined benefit~~ retirement plan or system in order to permit a current member to purchase portability service credit in the accepting plan through the use of his or her membership contributions ~~to~~in the transferring plan.
- (2) ~~"~~ *Portability service credit* ~~"~~ shall mean service credit purchased in an accepting plan by the transfer of membership assets from the transferring plan.
- (3) ~~"~~ *Transferring plan* ~~"~~ shall mean the retirement plan or system which is transferring membership assets to an accepting plan to enable a former employee of the transferring plan to purchase portability service credit in the accepting plan through the use of his or her membership contributions in the transferring plan.

- (Bb) The Board of Supervisors ~~of Fairfax County~~ may enter into agreements with the Virginia Retirement System (VRS) or with any political subdivision of the Commonwealth of Virginia to permit any vested member of ~~the Virginia Retirement System~~VRS or any vested member of a retirement plan or system of a political subdivision of the Commonwealth of Virginia to purchase portability service credit in ~~the Fairfax County Employees' Retirement~~this System; provided, ~~however,~~ that the Board of Supervisors may only enter into such agreements with political subdivisions of the Commonwealth of Virginia whose retirement plans or systems constitute defined benefit plans, or eligible deferred compensation plans described in ~~section~~Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in ~~section~~Section 457(e)(1)(A) ~~of the Code~~.

- (Cc) The purchase of portability service credit in ~~this~~the System pursuant to this Section may only be made within eighteen (18) months of the date when a member commences employment in a position covered by ~~this~~the System, or, for employees who are members of ~~this~~the System on ~~the date of the enactment of this ordinance,~~March 24, 2003, within eighteen (18) months of ~~the~~this date ~~of the enactment of this ordinance~~.

- (Dd) In order to purchase portability service credit in ~~this~~the System, the member ~~must~~shall be a vested member of the transferring plan and the transferring plan ~~must~~shall be holding member contributions that are subject to transfer. A member desiring to purchase portability service credit shall make written application for the purchase of such credit to the System. The System ~~will~~shall determine from the transferring plan the amount of the member's assets that would be subject to transfer to the System. Based upon the amount subject to transfer, the Board ~~of Trustees of the System will~~shall determine the amount of portability service credit that would be actuarially equivalent to the amount of the assets to be transferred to the System; this amount ~~will~~shall represent the maximum amount of portability service credit that can be purchased. The Board ~~of Trustees will~~shall communicate the amount of portability service credit that can be purchased to the member in writing; however, in no event ~~will~~shall the amount of portability service credit that can be purchased exceed the duration of the member's employment in a position that was covered by the

transferring plan. The member shall have thirty (30) days from the date of the letter advising him or her of the amount of portability service credit that can be purchased to determine whether to proceed with the purchase or to withdraw his or her application for the purchase of portability service credit.

- (Ee) In the event that the assets transferred are not sufficient to purchase portability service credit in ~~this~~the System equivalent to five (5) years of service, the member ~~will~~shall not become vested in ~~this~~the System until his or her creditable service equals five (5) years.
- (Ff) The purchase of portability service credit in ~~this~~the System shall be accomplished upon the transfer of assets from the transferring plan to ~~this~~the System. Upon the completion of such transfer, the member shall lose all rights to any ~~benefits and~~ allowances and benefits from the transferring plan, and ~~will~~shall only be entitled to receive ~~benefits and~~ allowances and benefits from ~~this~~the System.
- (Gg) When a vested member of this System leaves his or her covered employment and enters a position covered by the Virginia Retirement System (VRS) or by a defined benefit retirement plan of a political subdivision of the Commonwealth of Virginia with which the Board of Supervisors has entered into a portability agreement, the former member of this System may purchase portability service credit in ~~the Virginia Retirement System~~VRS or the retirement ~~plan~~system of the political subdivision of the Commonwealth for whom he or she shall then work. In order to purchase such portability service credit, the member must make application in writing to this System, requesting that his or her membership assets be transferred to the accepting plan. The amount of assets subject to transfer shall be an amount equal to the greater of (i) ~~his or her~~the member's accumulated member contributions with interest thereon, or (ii) an amount representing the present value of ~~his or her~~the member's accrued benefits with this System. Upon the transfer of membership assets from this System to the accepting plan, the member shall lose all rights to any ~~benefits or~~ allowances or benefits from this System based upon the service giving rise to the assets transferred to the accepting plan by this System. Should such a person resume service in a position covered by this System in the future, he or she may purchase service credit for such prior service or purchase portability service credit, if eligible to do so, in accordance with the provisions of this Article at the time he or she again becomes a member of this System. (18-01-3; 8-03-3.)

#### Division 6. - Contributions.

##### Section 3-2-25. - Member contributions.

- (a) There shall be picked up from the compensation of each member for each and every payroll period ending subsequent to December 22, 1984, the contribution payable by such member as provided in this Section; provided, ~~however,~~ that no contributions shall be required or permitted of any SESRP member. The Board of Supervisors may, from time to time, revise the rates of member contributions to the System.
- (b) Except as provided in Subsection (a) of this Section ~~3-2-25(a)~~, all present and future members, otherwise qualified, who, on or before December 31, 1981, and upon approval of the Board ~~of Trustees~~, or within thirty (30) days of appointment as employees:
  - (1) Do not agree in writing to the ~~provisions~~terms set forth in ~~Section 3-2-25~~Subsection (b)(2) of this Section and Section 3-2-32(a)(2) ~~will~~shall be considered ~~as~~ participants in Plan A and contributions shall be made for each pay period for which he or she received compensation equal to four percent (4%) of his or her creditable compensation until his or her annual creditable compensation during the calendar year exceeds the taxable wage base. When such

a member's annual creditable compensation during the calendar year exceeds the taxable wage base, contributions shall be made equal to five ~~and~~ one-third percent (~~54~~ 5 1/3%) of his or her creditable compensation.

- (2) Agree in writing to the ~~provisions~~ terms set forth in ~~Section 3-2-25(b)(2)~~ this Subsection and Section 3-2-32(a)(2) ~~will~~ shall be considered participants in Plan B, and ~~contribution~~ contributions shall be made for each pay period for which he ~~received~~ or she receives compensation subsequent to the election of Plan B equal to five ~~and~~ one-third percent (~~54~~ 5 1/3%) of his or her creditable compensation.
- (c) Notwithstanding any other provision of this Section, no ~~pick-up~~ pick-up shall be made from any member's compensation if the employer's contribution required hereunder is in default.
- (d) The Board may modify the method of collecting the ~~pick-up~~ pick-up contributions of members so that the employers, departments, institutions, and agencies required to remit to the Treasurer of the Board as provided in Subsection (b) of this Section may retain the amounts picked up by them with respect to members' salaries and have a corresponding amount deducted from County funds otherwise payable to them.
- (e) The Board ~~of Trustees~~ may approve written requests to change the offered optional plan selected under Subsection (b) of this Section when such requests are made not later than December 31, 1981.
- (f) All contributions required to be made under ~~paragraphs~~ Subsections (b) and (c) ~~above of this~~ Section with respect to current services rendered by an active member on or after December 22, 1984, shall be picked up by the County, and shall be treated as the employer's contribution in determining tax treatment under Section 414(h)(2) of the ~~United States~~ Internal Revenue Code ~~for federal tax purposes, pursuant to 26 USC § 414(h)(2)~~. For all other purposes under this ~~chapter~~ Chapter and otherwise, such ~~pick-up~~ pick-up contributions shall be treated as contributions made by a member in the same manner and to the same extent as contributions made by a member prior to December 22, 1984. All picked ~~up~~ amounts shall be included in compensation for purposes of calculating member benefits under Division 8. The County ~~of Fairfax~~ shall pay such picked ~~up~~ amounts from the same source of funds which is used in paying earnings to the employee. (20-81-3; 34-81-3; 36-83-3; 5-85-3.)

Section 3-2-26. - Employer contributions.

- (a) Each employer shall contribute at an annual rate to be fixed by the Board of Supervisors.
- (b) The aggregate present value of future employer contributions payable into the retirement allowance account shall be sufficient, when combined with the amount then held in the members' contribution account and the retirement allowance account together with the present value of future employee contributions, to provide the estimated prospective benefits payable. The annual employer contribution rate shall be fixed as equal to the employer normal cost ~~(normal cost component)~~ plus an expense rate, as long as the System's funding ratio (actuarial value of the System's assets divided by actuarial accrued liability of the System) remains within a corridor, the lower measurement of which is described below and the upper measurement of which is one-hundred-twenty percent (120%). The employer normal cost and System actuarial accrued liability are to be measured using the entry age normal funding method.

- To the extent that the System's funding ratio exceeds one-hundred-twenty percent (120%), a credit shall be established equal to the amount of assets in excess of one-hundred-twenty percent (120%) of the actuarial accrued liability.
- To the extent that the System's funding ratio is lower than the lower measure of the corridor, a charge shall be established equal to the difference between the lower measure plus the actuarial accrued liability and the assets.

The employer contribution shall be adjusted by a fifteen (15) year amortization of ~~this~~the credit or charge described in this Subsection, to be paid until the funding ratio re-enters the corridor, at which time it ~~will~~shall cease.

Effective with the fiscal year 2016 County contribution rate, the lower measure of the corridor shall be established at ninety-five percent (95%). The ninety-five percent (95%) threshold shall be increased until it reaches one-hundred percent (100%), no later than by the year 2020. Once the lower measurement of the corridor reaches one-hundred percent (100%), the fifteen (15) year amortization described above shall be over a fixed fifteen (15) years with additional fifteen (15) year amortization layers created annually. Once the System's funding ratio reaches one-hundred percent (100%), such amortizations shall cease.

In the event of an ordinance change that affects benefits, the employer contribution rate shall be changed effective with the July 1 coincident with or next following the date of adoption of the ordinance change. The employer normal cost component shall be adjusted to the level required by the ordinance change and there ~~will~~shall be an additional component to the employer cost equal to the increase in actuarial accrued liability. Any additional actuarial accrued liability which does not reduce the funding level below one-hundred-twenty percent (120%) shall be excluded from this component. (20-81-3; 27-90-3; 16-02-~~3,3~~; 28-15-3, § ~~4-1~~)

#### Division 7. - Assets of System.

##### Section 3-2-27. - Assets to be credited to one of two accounts.

All of the assets of the System shall be credited, according to the purpose for which they are held, to one (1) of two (2) accounts, namely, ~~"the members' contribution account,"~~ and ~~"the retirement allowance account."~~ (20-81-3.)

##### Section 3-2-28. - Members' contribution account.

- The members' contribution account shall be the account to which all members' contributions, ~~pickup~~pick-up contributions and interest allowances as provided in this Article shall be credited. In the case of any SESRP member, the member's contribution account shall consist of the amount in the Severance Account as defined in the provisions of SESRP effective on January 1, 1996, and the member's accumulated contributions to the System in existence at the time the member elected to participate in the SESRP. After January 1, 1996, the member's contribution account of any SESRP member shall annually be credited with the difference between the SESRP member's creditable compensation and the member's unadjusted compensation. From this account shall be paid the accumulated contributions of a member required to be returned to him or her upon withdrawal or paid in the event of his or her death before retirement.
- Each member's contribution and ~~pickup~~pick-up contributions provided for in Section 3-2-25 shall be credited to the individual account of that member.



- (c) Each individual account of the members' contribution account shall be credited annually with interest at a rate or rates established by the Board; provided, ~~however~~, that interest shall accrue on any such contribution beginning at the end of the calendar year in which each such contribution was made, and further provided that interest shall not be accredited or accumulated to the individual accounts of members who have ceased to be employees for a period of more than five (5) years. The Board may at any time, and from time to time, establish a new interest rate or rates which shall be applicable under this Section.
- (d) Upon the retirement of a member, his or her accumulated contributions shall be transferred from the members' contribution account to the retirement allowance account.
- (e) Upon receipt of a completed application, the Board shall refund the individual accounts of members who have ceased to be employees after completing fewer than five (5) years of creditable service. The completed application ~~must~~shall include an election by the member directing the System to refund the individual account directly to the member or to directly transfer the account to another plan as permitted under ~~the provisions of~~ the Internal Revenue Code. (20-81-3; 5-85-3; 27-90-3; 40-08-3.)

Section 3-2-29. - Retirement allowance account.

- (a) The retirement allowance account shall be the account in which shall be accumulated all employer contributions, amounts transferred from the members' contribution account, and to which all income from the invested assets of the ~~system~~System after all expenses for required services shall be credited. This ~~amount~~account shall pay retirement allowances, other benefits payable after a member's retirement, and necessary expenses of the ~~system~~System.
- (b) The amount of interest allowances provided for in Section 3-2-28 shall be transferred each year from the retirement allowance account to the members' ~~contributions~~ contribution account. (20-81-3.)

Section 3-2-30. - Deposits.

For the purpose of meeting disbursements the Board ~~will~~shall maintain sufficient cash equivalents. (20-81-3.)

Division 8. ~~Benefits and Conditions Thereof.~~

Section 3-2-31. - Service retirement.

- (a) Normal ~~Retirement~~service retirement. Any member, in service at his or her normal retirement date or within ~~nine~~ninety (90) days prior thereto, and who has completed five (5) years of creditable service, may retire at his or her normal retirement date or thereafter upon written notice to the Board, made by the member or his or her duly appointed agent, and stating the time the retirement is to become effective. However, such effective date shall be subsequent to the filing of such notice.
- (b) Early ~~Retirement~~service retirement. Any member who has completed twenty-five (25) years of creditable service and attained the age of fifty (50) years, or any member who has completed at least ten (10) years of creditable service and whose age, when combined with the years of his or her creditable service equals at least the sum of seventy-five (75) years, may retire pursuant to the procedures set forth in Subsection (a) of this Section. (20-81-3; 14-87-3.)

Section 3-2-32. - Service retirement allowance and other benefits.

(a) Normal ~~Retirement~~ service retirement.

- (1) Upon normal service retirement after July 1, 1981, a member participating in either Plan A or Plan C shall receive an annual retirement allowance payable monthly for life consisting of an amount equal to one ~~and eight-tenths percent~~ (1.8%) of his or her average final compensation not in excess of his ~~Social Security~~ or her social security breakpoint plus two percent (2%) of the average final compensation in excess of his ~~Social Security~~ or her social security breakpoint, said sum multiplied by the number of years of creditable service.
- (2) Upon normal service retirement after July 1, 1981, and after undergoing the additional cost deductions through December 31, 1981, a member participating in either Plan B or Plan D shall receive an annual retirement allowance payable monthly for life consisting of an amount equal to two percent (2%) of his or her average final compensation, said amount multiplied by the number of years of creditable service. In the event a participant in Plan B retires before December 31, 1981, the accumulated additional deductions in excess of four percent (4%) of pay not in excess of the taxable wage base shall be refunded and the member's retirement allowance ~~will~~ shall be determined in accordance with Subsection (a)(1) of this Section.
- (3) ~~Additional benefits: (A) Pre-62 compensating benefit.~~ In addition to the allowance provided in Subsections (a)(1) and (2) of this Section, any member who had retired prior to the age of sixty-two (62) years and before July 1, 2000, shall receive except as provided in Subsection (a)(4) of this Section ~~3-2-32(a)(3)(B)~~ an additional monthly benefit equal to one (1%) percent of the average final compensation not in excess of his ~~Social Security~~ or her social security breakpoint times years of service until such member attains the age of ~~62. This additional benefit shall be referred to as the Pre-62 Compensating Benefit~~ sixty-two (62) years.
- (~~B~~) 4) Pre-social security benefit. In addition to the allowance provided in Subsections (a)(1) and (2) of this Section, any member who retires on or after July 1, 2000, or any member who had retired prior to the age of ~~62~~ sixty-two (62) years, before July 1, 2000 and who had not attained the age of sixty-two (62) years as of July 1, 2000, shall receive an additional monthly benefit equal to one percent (1%) of the average final compensation not in excess of his ~~Social Security~~ or her social security breakpoint times years of service until the first month after such member is entitled to an unreduced ~~Social Security benefit. This additional benefit shall be referred to as the Pre-Social Security Benefit~~ social security benefit. Any member who retired on or after July 1, 2000, and before February 26, 2001, and was at least sixty-two (62) years of age but not yet entitled to an unreduced ~~Social Security~~ social security benefit as of the date of his or her retirement, shall receive the ~~Pre-Social Security Benefit~~ pre-social security benefit, without interest, retroactive to the effective date of his or her retirement. However, the ~~Pre-Social Security Benefit~~ pre-social security benefit provided herein shall not be credited to the DROP accounts of members of Plans C or D who elect to participate in the ~~Deferred Retirement Option Program provided for in Section 3-2-57~~ DROP; however, upon the completion of the member's DROP period, the member shall be entitled to receive the ~~Pre-Social Security Benefit~~ pre-social security benefit provided herein if he or she is not then entitled to an unreduced ~~Social Security Benefit~~ social security benefit until the first month after such member is entitled to an unreduced ~~Social Security benefit~~ social security benefit. The term unreduced social security benefit shall mean a social security benefit not reduced as a result its receipt before the normal retirement age for receiving social security benefits, as defined by applicable federal statute and regulation.



- (b) Early ~~Retirement~~service retirement. Upon early service retirement, a member shall receive an amount which shall be determined in the same manner as for retirement at his or her normal retirement date under Subsections (a)(1) and (a)(2) of this Section, with years of creditable service and average final compensation being determined as of the date of his or her actual retirement; and the amount of the retirement allowance so determined being reduced on an actuarial equivalent basis for the period that the actual retirement date precedes the date the member ~~will~~shall attain the age ~~65~~of sixty-five (65) years.
- (c) Joint and ~~Last Survivor Option~~last survivor option. A member may elect to receive a decreased retirement allowance during his or her lifetime and to have such retirement allowance, or a specified fraction thereof, continue after his or her death to his or her spouse, for his or her spouse's lifetime. Such election may be made or changed at any time up to the member's actual retirement date. After the member's actual retirement date, such election may not be changed except as permitted ~~by Subsections in Subdivisions~~ (1) and (2) of this Subsection ~~(e)~~. The amount of ~~such~~any retirement allowance for a spouse provided by this Subsection shall be determined on an actuarial equivalent basis and shall be calculated at the member's actual retirement date using the actuarial adjustment factors in Table 1.

(1) In the event a retired member has elected a reduced retirement allowance in consideration of a continued allowance to his or her spouse after the member's death, and the member and such spouse are divorced after the retirement date, the member may discontinue the allowance to the spouse, and the member's retirement allowance may be increased to that amount to which the member would have been entitled had no election been made, if the spouse's right to the allowance has been extinguished pursuant to a final decree of divorce or a final property order entered in connection with a divorce case. The increase in the member's retirement allowance shall take effect as of the date of the final decree of divorce or final property order or July 1, 1988, whichever is later.

(2) In the event a retired member has elected a reduced retirement allowance in consideration of a continued allowance to his or her spouse after the member's death, and such spouse predeceases the member, such member's retirement allowance shall be increased to that amount to which the member would have been entitled had no election been made. The increase in the member's retirement allowance shall take effect as of the day following the date of the spouse's death.

TABLE 1  
FAIRFAX COUNTY EMPLOYEES' RETIREMENT SYSTEM

Actuarial Adjustment Factors That Would Apply to ~~Participants~~Members with a  
Normal or Early Service Retirement ~~Benefit~~Allowance Determined Under Section 3-2-32  
Who Elect a Joint and Last Survivor Option.

<u>Percent of <del>Benefit</del> Allowance</u>		<u>Increase/Decrease For</u>	
<u>Continued to Spouse</u>		<u>Each Full Year</u>	
<u>Upon</u>	<u>Factor for Equal Ages</u>	<u>Beneficiary is Older</u>	<u>Maximum Factor</u>
<u><del>Participant</del> Member's</u>		<u>(Younger) Than</u>	
<u>Death</u>		<u>Employee</u>	
100%	85%	0.7%	96%
75%	89%	0.6%	97%
66.67%	90%	0.5%	98%
50%	92%	0.4%	99%

(d) Minimum ~~Benefit~~: benefit.

- (1) In no event shall the annual retirement allowances for a member retiring after December 31, 1970, be less than that determined under the ~~system~~System as in effect ~~on or~~ prior to such date; nor shall any member's annual retirement allowance be less than \$300.00.
- (2) If the retirement allowance of any member who retires during a calendar year beginning on or after January 1, 1979, to December 31, 1981, inclusive, would have been larger if computed as of December 31 of the calendar year preceding the member's retirement, the member shall be entitled to the larger retirement allowance. A member who elects to receive such an allowance shall also be eligible for a refund of his or her contributions accumulated from January 1 of the year of his or her retirement through the date of his or her actual retirement. (20-81-3; 34-81-3; 36-88-3; 11-00-3; 10-01-3; 26-12-3; 50-13-3.)

Section 3-2-33. - Ordinary disability retirement.

- (a) Any member who is in service or who is within one (1) year of the date that he or she ceased being in service and who has five (5) or more years of creditable service may retire on account of disability, not compensable under the provisions of Section 3-2-35, upon written application to the Board, made by the member or his or her employer, setting forth at what time the retirement is to become effective; provided, that such effective date shall be after the last day of service, but shall not be more than ninety (90) days prior to the execution and filing of such application; and provided further, that the Medical Examining Board, after a medical examination of such member, shall certify that such member is, and has been continuously since such effective date if prior to the filing of the application, mentally or physically incapacitated for further employment by the employer, that such incapacity is likely to continue into the indefinite future, and that such member should be retired.
- (b) Any member who has not been in service for more than a year at the time of application who is otherwise eligible for ordinary disability retirement may be granted an ordinary disability retirement if ~~and only if~~:

- (1) Written application is made containing a justification for the failure to apply within one (1) year of ceasing service; and
- (2) The Board finds:
  - (A) The disability arose in the course of the member's service;
  - (B) The disability was the proximate cause of the member's ceasing to be in service; and
  - (C) There was good cause for the member not to have filed an application while in service or within one (1) year after the date that he or she ceased to be in ~~Service~~service.
- (c) In the event that a member is granted an ordinary disability retirement pursuant to Subsection (b) of this Section, the Board shall establish an effective date which considering all the circumstances of the individual case is just; provided ~~however~~, such date shall be no more than ninety (90) days prior to the execution and filing of his or her application. (20-81-3; 34-81-3; 27-90-3, § 1.)

Section 3-2-34. - Ordinary disability retirement allowance.

Upon ordinary disability retirement, as provided for in Section 3-2-33, a member shall receive an annual retirement allowance, payable monthly during his or her lifetime and continued disability, consisting of an amount equal to two percent (2%) of his or her average final compensation multiplied by the number of years of creditable service. However, said retirement allowance shall not be greater than sixty percent (60%) of the member's average final compensation or less than ~~three hundred dollars (\$300.00)~~ per annum. (20-81-3.)

Section 3-2-35. - Service-connected disability retirement.

- (a) Any member who is in service, or within one (1) year of the date that he or she ceased to be in service may retire on account of disability which is due to injury by accident and/or disease(s) which arose out of and in the course of the member's service; provided, that the Medical Examining Board, after a medical examination of such member shall certify that such member is, and has been continuously since the date such retirement is to be effective, mentally or physically incapacitated for further employment by the employer as a result of such injury by accident and/or disease(s), that such incapacity is likely to continue into the indefinite future, and that such member should be retired. The Board shall determine whether a member is disabled due to injury by accident and/or disease(s) which arose out of and in the course of a member's service. In making this determination, the Board shall consult the decisions of the ~~Industrial~~Virginia Workers' Compensation Commission, the Court of Appeals of Virginia, and the Supreme Court of Virginia which have applied or construed similar language under the Virginia Workers' Compensation Act.
- (b) The member or his or her employer ~~must~~shall submit a written application setting forth at what time the retirement is to become effective; provided, that such effective date shall be after the last day of service but shall not be more than ninety (90) days prior to the date of such application. Prior to submitting such application, the member ~~must~~shall apply for all ~~Social Security~~social security benefits to which he or she may be entitled. The member shall also report his or her injury by accident and/or disease(s) and make a claim for ~~Workers' Compensation~~workers' compensation benefits to his or her employer in accordance with the policies and procedures established by the County or the ~~County~~ School Board and other authority. He or she shall cooperate in the investigation of his or her workers' compensation claim by the employer or its agent. The member shall submit copies of the dispositions as made of his ~~Workers' Compensation and Social~~

~~Security~~or her workers' compensation and social security claims and any subsequent awards or other documents reflecting any modification or termination of such benefits ~~to the Board~~. In making its determination of a member's eligibility for retirement under this Section, the Board shall give great weight to the decisions of the ~~Industrial~~Virginia Workers' Compensation Commission, the Court of Appeals of Virginia, and the Supreme Court of Virginia on the compensability of his or her disability under the Virginia Workers' Compensation Act; and the Board may modify its prior determination of eligibility under this Section in light of any such decision within ninety (90) days after the date that such decision becomes final.

- (c) Any member otherwise eligible for ordinary disability retirement under Section 3-2-33, who applies for retirement pursuant to this Section, and whom the Board finds to be disabled but not eligible for retirement under this Section, shall be retired pursuant to ~~the provisions of~~ Section 3-2-33.
- (d) Any member who has not been in service for over one (1) year at the time of his or her application who is otherwise eligible for service-connected disability retirement under this Section may be granted a service-connected disability retirement ~~if and only~~under this Section if:
  - (1) Written application is made containing a justification for the failure to apply within one (1) year of ceasing to be in service; and
  - (2) The Board finds:
    - (A) The disability arose in the course of the member's service;
    - (B) The disability was the proximate cause of the member's ceasing to be in service; and
    - (C) There was good cause for the member not to have filed an application while in service or within one (1) year after the date that he or she ceased to be in service. (20-81-3; 24-85-3; 14-87-3; 27-90-3, § 1.)

Section 3-2-36. - Service-connected disability retirement allowance.

- (a) Upon service-connected disability retirement under ~~the provisions of~~ Section 3-2-35, a member shall receive an annual retirement allowance, payable monthly and during his or her lifetime and continued disability, consisting of an amount equal to sixty-six and two-thirds percent (66 2/3%) of his or her average final compensation. However, the allowance shall be reduced by fifteen percent (15%) of the amount of any primary ~~Social Security~~social security benefit to which said member is entitled ~~under any Federal Social Security Act~~, and by the amount of any compensation paid to the member under the Virginia Workers' Compensation Act (~~"the Act"~~) for temporary total or partial incapacity.
- (b) When the amount of a member's primary ~~Social Security~~social security benefit has once been determined for purpose of applying the fifteen percent (15%) reduction described above, the amount of the reduction shall not thereafter be increased on account of cost-of-living increases awarded under ~~any Federal Social Security Act~~social security. However, the amount of the reduction shall be increased by an award of a cost-of-living increase to a member's compensation for temporary total or partial incapacity under the ~~Act~~Virginia Workers' Compensation Act (Act). When the member is no longer entitled to receive payments for temporary total or partial incapacity under the Act because of the limits in the Act as to the total amount of such compensation or as to the period of time that the member is entitled to receive such compensation, the amount of such payments shall no longer be used to reduce the retirement allowance, and, accordingly,

subsequent monthly payments of the allowance shall be determined as if the original allowance had been computed without the reduction for such payments.

- (c) If a member receives his or her compensation for temporary total or partial incapacity under the Act~~Virginia Workers' Compensation Act (Act)~~ in the form of a lump sum payment, he or she shall receive no monthly retirement allowance otherwise payable under this Section until such time as the amounts he or she would have received equal the amount of his or her lump sum benefit under the Act; provided, ~~however,~~ neither a lump sum payment or portion thereof representing compensation for permanent total or partial loss or disfigurement under the Act, nor a lump sum payment or portion thereof representing compensation for periods of temporary total or partial incapacity which occurred prior to the effective date of the member's retirement under Section 3-2-~~35~~35, shall be offset against the member's allowance under this Section; and, provided further, that in the event that a member receives a lump sum settlement of benefits that he or she is or may be entitled to in the future under the Act, and said settlement does not specify how much of the lump sum represents settlement of his or her entitlement to temporary total or partial incapacity, as opposed to other benefits, the Board shall determine the portion of such lump sum which in its judgment represents compensation for such benefits. (20-81-3; 4-83-3; 1-93-3; 23-07-3; 47-08-3; 23-11-3; 66-13-3, § 41.)

Section 3-2-37. - Service-connected accidental death benefit.

If death of a member is caused by an accident occurring prior to retirement, and such death is compensable under the Virginia ~~workers'~~Workers' Compensation Act, there shall be paid, in addition to any other benefits of this Article or other legislation, the following:

- (a) For a member whose death occurs before retirement:
- (1) The member's accumulated contributions, as provided in Section 3-2-28(c) to ~~the~~his or her designated beneficiary duly approved, acknowledged, and filed with the Board, otherwise to the member's estate; provided, no benefit is payable under Section 3-2-38 or under Section 3-2-42; and
  - (2) The sum of ~~ten thousand dollars (\$10,000.00)~~ to the his or her designated beneficiary duly approved, acknowledged, and filed with the Board, otherwise to the member's estate.
- (b) For a member whose death occurs after retirement:
- (1) The member's accumulated contributions, as provided in Section 3-2-28(c) less the amount of any retirement ~~allowance~~allowances previously received by the member, such sum to be paid to his or her designated beneficiary duly approved, acknowledged, and filed with the Board, otherwise to the member's estate; provided, no benefit is payable under Section 3-2-32(c) or under Section 3-2-38; and
  - (2) The sum of ~~ten thousand dollars (\$10,000.00)~~ to his or her designated beneficiary duly approved, acknowledged, and filed with the Board, otherwise to the member's estate. ~~Designated beneficiaries under this Section may be changed from time to time pursuant to the procedure prescribed by the Board.~~ (20-81-3; 34-81-3; 5-85-3.)

Section 3-2-38. - Refund of contributions upon withdrawal or death; ~~and~~ deferred vested ~~benefits~~benefit.

- (a) Refund of contributions.

(1) If a member has ceased to be an employee, otherwise than by death or by retirement under ~~the provisions of~~ this Article, and has fewer than five (5) years of creditable service on his or her date of separation, he or she shall be eligible for a refund of the total of his or her accumulated contributions (with interest) which have been reduced by the amount of any retirement allowances previously received by him or her under ~~any of the provisions of~~ this Article. The member ~~must~~ shall file a written application with the Board for such refund, and the application ~~must~~ shall include an election by the member directing the System to have the refund paid directly to the member or to transfer the refund amount to another plan identified by the member as permitted under the ~~provisions of the Internal Revenue Code.~~ ~~(b) If a member has five or more years of creditable service on his date of separation from the County, the member may leave his accumulated contributions in the fund and receive a deferred annuity payable beginning the date the member attains age 65, or in an actuarially reduced amount payable at the optional early retirement age, in accordance with applicable provisions of this Article. In lieu of a deferred vested annuity, a member with five or more years of creditable service may elect to receive a refund of his accumulated contributions (with interest) reduced by the amount of any retirement allowance previously received under any of the provisions of this Article. The member must file a written application with the Board on separation, or at any time thereafter, so long as he has not yet begun to receive a deferred vested annuity. The application must include an election by the member directing the System to have the refund paid directly to the member or to transfer the amount to another plan identified by the member as permitted under the provisions of the Internal Revenue Code. The refund shall be made not later than 90 days after the receipt of the application.~~

(e2) Should death occur to a member in service who has completed less than fifteen (15) years of creditable service or to a member on retirement, the amount of his or her accumulated contributions, reduced by the amount of any retirement ~~allowance~~ allowances previously received by him or her under any of the provisions of this Article, shall then be payable in a lump sum to a designated beneficiary on file with the System, or in the absence of a designated beneficiary, to his or her estate; provided, no benefit is payable under ~~subparagraph (c) of Section 3-2-32. Such designated beneficiary may be changed from time to time by written notice by the member, signed and filed with the Board.~~ Section 3-2-32(c).

(e3) Should death occur to a member in service who has completed fifteen (15) years of creditable service and if the member's designated beneficiary, ~~duly approved, acknowledged and filed on file~~ with the ~~Board~~ System, is not the member's spouse, a lump sum payment equaling the amount of the member's accumulated ~~contribution~~ contributions, as provided in Section 3-2-28(c), shall be paid to the designated beneficiary.

(e4) Should death occur to a member in service who has completed fifteen (15) years of creditable service and has no designated beneficiary, a lump sum payment equaling the member's ~~contribution's~~ contributions shall be paid to the member's estate; provided, that, if such member's spouse is the sole person entitled under the laws of the Commonwealth of Virginia to the benefits provided hereunder then said spouse shall have the same right to elect benefits as is provided to spouses in Section 3-2-42.

(f5) All refunds shall be mailed to the last address on record with the Board. Refunds that have not been claimed within six (6) months shall become the property of the System.

(g6) A member who becomes eligible for membership in either the Virginia Retirement System (VRS) and the Educational Employees' Supplemental Retirement System ~~(Article 4 of Fairfax~~

County (ERFC), the Fairfax County Police Officers Retirement System ~~(Article 7)~~, or the Fairfax County Uniformed Retirement System ~~(Article 3)~~ prior to receipt of any refund amount to which he or she is entitled may elect in writing to transfer the amount of his or her refund directly from this System to the system for which he or she has become eligible for membership, under such rules and regulations as are adopted by the Board and by the board of the system for which he or she has become eligible for membership. In the alternative, to the extent that a refund is an "eligible rollover distribution" within the meaning of Section 402(f)(2)(A) of the Internal Revenue Code ~~Section 402(f)(2)(A)~~, such a member may (a) pursuant to the rules and regulations of the system of which he or she is eligible to become a member, elect in writing to roll over the portion of his or her refund which represents such an eligible rollover distribution directly from this System to the system for which he or she has become eligible for membership or (b) elect in writing to roll over the portion of his or her refund which is such an eligible rollover distribution directly to an individual retirement account.

~~(h7)~~ Effective on and after January 1, 2007, if a member dies while performing "qualified military service" as defined in Section 414(u) of the Internal Revenue Code, any additional benefits that would have been provided under the System if the member had resumed employment on the day prior to his or her death and then terminated employment due to death shall be paid to such member's designated beneficiary or, if applicable, estate. This provision shall also apply to Section 3-2-42 regarding spouse retirement allowances.

(8) In lieu of electing deferred vested benefit pursuant to Subsection (b) of this Section, a member with five (5) or more years of creditable service may elect to receive a refund of his or her accumulated contributions made to the System (with interest) reduced by the amount of any retirement allowances previously received under this Article. The member shall file a written application with the Board on separation, or at any time thereafter, so long as he or she has not yet begun to receive a deferred vested benefit. The application shall include an election by the member directing the System to pay the refund paid directly to the member or to transfer the refund to another plan identified by the member as permitted under the Internal Revenue Code. The refund shall be made not later than ninety (90) days after the receipt of the application.

(b) Deferred vested benefit. If a member has five (5) or more years of creditable service on his or her date of separation, the member may leave his or her accumulated contributions in the System and receive a deferred vested benefit payable beginning on the date the member attains sixty-five (65) years of age, or in an actuarially reduced amount payable at the optional early retirement age, in accordance with applicable provisions of this Article. (20-81-3; 34-81-3; 5-85-3; 27-90-3; 45-93-3; 10-01-3; 40-08-3; 01-11-3.)

Section 3-2-39. - Medical ~~examination of beneficiary of disability retirement allowance~~ reevaluation of disabled members; penalty for unjustified refusal to accept medical attention ~~or~~ or vocational rehabilitation or selective employment, or to submit to medical examination.

(a) At least once each year during the first five (5) years following the retirement of a member on a disability retirement allowance, and once in every three- ~~(3)~~ year period thereafter, the Board shall require any such member prior to his or her normal retirement date to undergo a medical examination by the Medical Examining Board; provided, that said medical examination requirement shall not be applicable to a member on a disability retirement allowance during the period such member is receiving benefits under the Virginia Workers' Compensation Act. On recommendation of the Medical Examining Board, the Board may waive the medical examination requirement as to any such member. Should such a member refuse to submit to any such medical examination, his or



her disability retirement allowance shall be discontinued until his or her withdrawal of such refusal; and should his or her refusal continue for one (1) year, all his or her rights to any further disability retirement allowance shall cease.

- (b) Members who are receiving service-connected disability retirement allowances pursuant to Section 3-2-35, and who are receiving periodic payments from their employers pursuant to the Virginia Workers' Compensation Act (Act) which are required to be offset against the allowances pursuant to Section 3-2-36, shall cooperate with and accept medical examinations, vocational rehabilitation, and selective employment provided by the employer pursuant to the ~~Virginia Workers' Compensation~~ Act. In the event that such a member's periodic payments are suspended by the Virginia Workers' Compensation Commission (Commission) for unjustified refusal to accept medical examinations, vocational rehabilitation, and/or selective employment, the Board may, if in its determination such refusal was unjustified, direct that the allowance pursuant to Section 3-2-36 shall be computed as if the member received the suspended payments; and should such member's unjustified refusal continue for one (1) year, all his or her rights to any future disability retirement allowance shall cease. The Board shall make appropriate adjustment to the member's allowance if the suspension by the ~~Workers' Compensation~~ Commission is subsequently reversed or modified. Employers shall promptly notify the Board of any suspensions or releases from suspensions affecting members subject to this Subsection. For purposes of this SectionSubsection, an order of the ~~Workers' Compensation~~ Commission suspending compensation for unjustified refusal creates a rebuttable presumption that the member unjustifiably refused medical examinations, vocational rehabilitation, and/or selective employment. (20-81-3; 36-88-3; 11-98-3.)

Section 3-2-40. - Reduction of service-connected disability retirement allowance.

- (a) Whenever the Board ascertains that any member receiving a service-connected disability retirement allowance is, prior to his or her normal retirement date, engaged in ~~a~~-work paying more than the difference between his ~~disability~~or her allowance and the current salary of the position from which he or she retired, the Board shall reduce such ~~retirement~~ allowance to an amount which, together with the amount earned by him or her, ~~equal~~equals the amount of the current salary of the position from which he or she retired. A member receiving a service-~~connection~~connected disability retirement allowance ~~must~~shall submit a copy of that portion of his or her federal income tax return showing the amount of his or her earned income, and he or she shall also be required to submit copies of all W-2 forms (wage statements) provided him or her by his ~~employers~~or her employer(s) to the Board by May 30~~th~~ of each year. Should such member refuse to submit copies of his or her federal income tax return or W-2 forms to the Board, his ~~retirement~~or her allowance shall be discontinued until his or her withdrawal of such refusal; and should his or her refusal continue for one (1) year, all his or her rights to any further service-connected disability retirement allowance shall cease. The Board shall have the power to reduce the member's service-connected disability ~~retirement~~ allowance to an amount less than that provided in the first sentence of this SectionSubsection, but not less than ~~twenty-five dollars (\$25.00)~~ a month, to recoup the amount of any overpayment from the System to the member on account of the member's earnings in excess of the maximum amount allowed under this Section.
- (b) The Board shall adopt written regulations governing the administration of this Section, providing for, among other things, the notification to the members deemed appropriate, and allowing for late submission of required documentation for good cause shown.



- (c) Should the Medical Examining Board report and certify to the Board at any time that any member receiving a service-connected disability retirement allowance is able to engage in gainful occupation or work paying more than the difference between his or her retirement allowance and the current salary of the position from which he or she retired, and should the Board find that such member shall have refused an offer of employment considered by the Board suitable to his or her capacity, he or she shall not be entitled to any such allowance during the continuance of such refusal, unless in the opinion of the Board such refusal was justified. (20-81-3; 36-88-3; 27-90-3, § 1.)

Section 3-2-41. - Cessation of disability retirement allowance.

- (a) Should a member ~~received~~receiving a disability retirement allowance return to service at any time prior to his or her normal retirement date, his or her disability retirement allowance shall cease, and he or she shall again become a contributing member. Upon his or her return to service, he or she shall be given membership service credit for all creditable service that he or she had accumulated as of the effective date of his or her disability retirement. In addition, any member returning to service after a period of service-connected disability retirement shall be given membership service credit for the period of his or her service-connected disability retirement.
- (b) When a member returns to service under the circumstances described in Subsection (a) of this Section, any excess accumulated contributions of such member over the disability retirement ~~allowance~~allowances received by him or her shall be transferred from the retirement allowance account to the member's contribution account.
- (c) Should the Board at any time determine that a member who is receiving an ordinary disability retirement allowance is no longer incapacitated, the Board shall promptly terminate his or her ~~ordinary disability retirement~~ allowance and notify the member in writing at his or her address as shown in the System's records.
- (1) Such member may appeal the action of the Board under ~~the provisions of~~ Section 3-2-49.
- (2) Within thirty (30) days of receipt of such notice, or within thirty (30) days of his or her receipt of the Board's denial of his or her appeal of the termination of his or her ordinary disability retirement allowance, if appealed, such member, if eligible, may apply in writing for a normal or early service retirement allowance. Such members shall be deemed to be in service during this thirty (30) day period solely for the purpose of applying for a service retirement and shall not be granted creditable service for this thirty (30) day period. For purposes of determining their eligibility for such retirement and calculating the appropriate retirement allowance, such members shall be credited with all the creditable service that they had as of the effective date of their ordinary disability retirement. The effective date of such member's normal or early service retirement pursuant to this ~~Section~~Subsection shall be the effective date of termination of his or her ordinary disability retirement allowance.
- (d) Should the Board at any time determine that a member who is receiving a service-connected disability retirement allowance is (i) no longer incapacitated or (ii) no longer incapacitated due to an injury by accident and/or ~~diseases~~disease(s) which arose out of and in the course of his or her service, the Board shall promptly terminate his or her service-connected disability retirement allowance and notify the member in writing at his or her address as shown in the System's records.
- (1) If at that time such member has five (5) or more years of creditable service and the Board determines that such member is presently incapacitated from further employment with his or

her employer due to injury by an accident and/or disease(s) which did not arise out of and in the course of his or her service and such incapacity is likely to continue indefinitely, the Board shall grant such member an ordinary disability retirement allowance effective as of the date of termination of his or her service-connected disability retirement allowance. For purposes of determining their eligibility for such retirement and calculating the appropriate retirement allowance, such members shall be credited with all the creditable service that they had as of the effective date of their service-connected disability retirement and shall receive membership service credit for the period of their service-connected disability retirement.

- (2) Any member whose service-connected disability retirement allowance has been terminated by the Board under this ~~section~~Section may appeal the action of the Board under ~~the provisions of~~ Section 3-2-49.
- (3) Within thirty (30) days of receipt of such notice, or within thirty (30) days of his or her receipt of the Board's denial of his or her appeal of the termination of his or her service-connected disability retirement allowance, if appealed, such member, if eligible, may apply in writing for a normal or early service retirement allowance. Members whose service-connected disability retirement had been changed by the Board to ordinary disability pursuant to Subsection (d)(1) of this Section may apply for a normal or early service retirement allowance in lieu of the ordinary disability retirement allowance. Members shall be deemed to be in service during this thirty (30) day period solely for the purpose of applying for a service retirement and shall not be granted creditable service for this thirty (30) day period. For purposes of determining their eligibility for such retirement and calculating the appropriate retirement allowance, such members shall be credited with all the creditable service that they had as of the effective date of their service-connected disability retirement. The effective date of such member's normal or early service retirement pursuant to this ~~Section~~Subsection shall be the effective date of termination of his or her service-connected disability retirement allowance. (20-81-3; 27-90-3, § 1; 6-95-3; 14-98-3.)

Section 3-2-42. - Spouse retirement allowance.

Should death occur to a member in service who has completed five (5) years of creditable service, a retirement allowance shall be payable to the member's spouse if said spouse is the member's designated beneficiary duly approved, acknowledged and filed with the Board. The annual retirement allowance, payable monthly for life shall be ~~50~~fifty percent (50%) of the annual retirement allowance provided in ~~Subsections Sections 3-2-32(a)(1) and (a)(2) of Section~~ or 3-2-32(a)(2), with creditable service and average final compensation being determined as of the date of the member's death. Said spouse shall elect in writing within one-hundred-eighty (180) days of the member's death, or within ninety (90) days of receiving notice from the Board, whichever comes first, to receive the benefits outlined above in this Section or a lump sum payment of the member's contributions, plus interest as provided in Section 3-2-28(c) ~~herein~~; in the event no election is made, said spouse shall receive benefits in the form of a lump sum. If a death is due to a service-connected accident as defined in Section 3-2-37 and the designated beneficiary under Section 3-2-37(a)(1) and (a)(2) is the member's spouse, the spouse shall elect in writing within one-hundred-eighty (180) days of the member's death, or within ninety (90) days of receiving notice from the Board, whichever comes first, to receive either the benefits contained in this Section or those contained in Section 3-2-37(a)(1). In the event of the spouse's death prior to receiving allowances under this Section equaling the sum of the member's ~~contribution's contributions to the System~~, plus interest, said sum, reduced by the amount of any retirement allowances previously paid under this Section, shall be paid to the spouse's designated beneficiary duly approved, acknowledged and filed with the Board, otherwise to the spouse's estate. (20-81-3; 5-85-3; 20-87-3; 29-09-3.)

Section 3-2-43. - Cessation of normal or early service retirement allowance.

- (a) ~~The provisions of~~ Subsection (b) of this Section shall apply to persons who are receiving a normal or early service retirement allowance from this System, the Fairfax County Uniformed Retirement System, or the Fairfax County Police Officers Retirement System and who submitted their application for such allowance to the Board of such system on or before July 21, 1986. ~~The provisions of~~ Subsection (c) of this Section shall apply to persons who are receiving a normal or early service retirement allowance from this System, the Uniformed Retirement System, or the Police Officers Retirement System and who submitted their application for such allowance to the Board of such system after July 21, 1986. ~~The provisions of~~ Personnel Regulation Section 9-2-4 shall apply to persons covered by either Subsection (b) or (c) of this Section.
- (b) Should a person receiving a normal or early service retirement allowance from this System, the Fairfax County Uniformed Retirement System, or the Fairfax County Police Officers Retirement System ("retiree") return to regular service in a permanent position in any office or employment paid directly or indirectly by ~~Fairfax~~the County, he or she shall elect to receive such retirement allowance under ~~the provisions of either Subsection (b)(1) or (b)(2) of this Section.~~one (1) of the following two (2) options:
- (1) Such allowance shall not commence or, if already commenced, shall cease while the retiree is so employed. His or her allowance shall commence or resume upon application or reapplication by the retiree after he or she has ceased permanent employment in such a position. The allowance of a retiree of this System who is appointed to a position covered by the Uniformed Retirement System or Police Officers Retirement System shall commence or resume at that cost-of-living adjustment amount pursuant to Section 3-2-44 which would have been payable had the retiree continued to receive his or her allowance without interruption. A retiree who elects in writing at the time of reappointment to a position covered by this Article not to become a member shall be exempted from this System. A retiree who elects in writing at the time of reappointment to a position covered by this Article to become a member shall be eligible:
- (A) For recomputation of his or her allowance to take into account compensation and creditable service attributable to the period of reemployment resulting in a deferral or cessation of his or her allowance under this ~~Section~~Subsection;
- (B) To make a new election for any optional benefit to which he or she is entitled; and
- (C) For a retirement allowance for a service-connected disability arising out of and in the course of his or her reemployment.

A retiree of the Uniformed Retirement System or Police Officers Retirement ~~Systems~~System who is appointed to a position covered by this Article and elects in writing within thirty (30) days of such appointment may be excluded from membership in this System.

- (2) Such allowance shall commence or shall not cease while the retiree is so employed. A retiree electing this option shall be excluded from membership in this System or any system covering the position, service in which results in the application of this ~~Section~~Subsection.
- (c) A person receiving a normal or early service retirement allowance from this System, the Fairfax County Uniformed Retirement System, or the Fairfax County Police Officers Retirement System

("retiree"); may return to employment for which compensation is paid directly or indirectly by ~~Fairfax~~the County ~~Subject~~, subject to the following conditions:

- (1) A retiree shall not receive in combined compensation and retirement allowance, computed monthly, any more than one-hundred-fifteen percent (115%) of the then current maximum monthly salary for a Deputy County Executive in the County's Compensation Plan. The appropriate ~~Board is authorized and directed to~~Retirement System Board of Trustees shall reduce the retiree's allowance as necessary to keep the combined salary and allowance at this limit. For purposes of this Subsection, a retiree's allowance shall be deemed to be the allowance that he or she would receive if he or she had not elected a joint ~~or and~~ last survivor option which results in an actuarially reduced allowance. Employers under all three (3) systems shall report salaries paid to retirees to the retiree's Board of Trustees.
  - (2) A retiree who is employed in a position service in which would otherwise make him or her eligible for membership in this ~~system~~System, the Uniformed Retirement System, or the Police Officers Retirement System, shall not be eligible for membership in that system.
- (d) Notwithstanding any other provision of this Article or any other Article of this Chapter, a ~~retiree~~person receiving a normal or early service retirement allowance from this System, the Fairfax County Uniformed Retirement System, or the Fairfax County Police Officers Retirement System (retiree) may be employed in a position under his or her former appointing authority subject to the following terms and conditions:
- (1) If the retiree is a member of this System and service in the position to which he or she is to be re-appointed ordinarily would result in membership in this System, his or her normal or early service retirement allowance shall be suspended for the duration of his or her new employment. During his or her new employment, he or she shall make member contributions to this System. At the time of his or her new employment, he or she shall be entitled to make all elections available to new members of this System, and if otherwise eligible, during his or her employment, he or she may apply for ordinary or service-connected disability retirement. In such case, his or her combined years of service and his or her average final compensation based on his or her new employment shall be used in calculating the disability retirement allowance. On re-application for service retirement from his or her new employment, the retiree shall receive as his or her service retirement allowance the higher of (i) his or her initial service retirement allowance increased by any cost-of-living increases that were granted by the Board to service retirements during the period of his or her new employment or (ii) a service retirement allowance calculated on the basis of his or her combined years of creditable service in his or her initial and new employment and his or her average final compensation calculated on the basis of the creditable compensation that he or she received during both his or her initial and new employment as if there had been no break in service.
  - (2) A retiree who is a member of this System and who is to be re-appointed to a position service in which would result in membership in either the Fairfax County Uniformed ~~or Retirement~~ System or the Fairfax County Police Officers Retirement ~~Systems~~System but for his or her membership in this System, shall be subject to the provisions of either Subsection (~~ba~~) or (~~e~~)b) of this Section, whichever is applicable.
  - (3) If the retiree is a member of either the Uniformed Retirement System or Police Officers Retirement ~~Systems~~System and service in the position to which he or she is to be appointed would result in membership in this System but for his or her membership in the other system,

the retiree shall be subject to the provisions of either Subsection (b) or (c) of this Section, whichever is applicable.

- (4) ~~The provisions of this~~ This Subsection ~~(d)~~ shall apply to all persons appointed to positions on or after March 1, 1990, service in which would ordinarily make them members of this System, the ~~Employees'~~ Uniformed Retirement System, or ~~the~~ Police Officers Retirement Systems System. (20-81-3; 35-81-3; 36-86-3; 27-90-3, § 1; 10-01-3; 11-05-3.)

Section 3-2-44. - Cost-of-living adjustments.

Monthly retirement allowances shall be adjusted effective July 1, 1981, and each July 1 thereafter in order to reflect changes in the cost of living since the date of the benefit commencement; provided, ~~however~~, that such adjustments shall not affect the amount of the ~~Social Security~~ social security benefit allowance payable pursuant to Section 3-2-32(a)(3)(~~A~~) or Section 3-2-32(a)(~~3~~)(B4); and, provided further, that allowances for service-connected disability retirement shall be subject to ~~the provisions of~~ Subsection (d) of this Section. The monthly benefit allowance to be effective July 1 of any such year shall be the benefit in effect immediately prior to such adjustment increased for the basic cost-of-living increase provided for in Subsection ~~3-2-44~~(a) of this Section and the supplemental cost-of-living increase, if any, provided for in Subsection (b) of this Section with such ~~increases~~ increase reduced as provided in Subsection (c) of this Section in the event the monthly retirement allowance has been in pay status for less than twelve (12) months.

- (a) The basic cost-of-living increase shall be the lesser of four percent (4%) and the percentage corresponding to the percentage increase in the Consumer Price Index during the twelve (12) calendar month period ending with the March immediately ~~proceeding~~ preceding the July in which the increase is effective. For the purpose of this Section, Consumer Price Index shall mean the Consumer Price Index for all Urban Consumers (CPI-U) as issued by the Bureau of Labor Statistics of the U.S. Department of Labor for the appropriate Standard Metropolitan Statistical Area (SMSA) that includes ~~Fairfax~~ the County, ~~Virginia~~.
- (b) As part of each annual actuarial valuation, the actuary shall determine the percentage supplemental cost-of-living increase (not greater than one percent (1%) that can be provided on the following July ~~first~~ 1 based upon the available actuarial surplus). The Board then may, but shall not be required to, increase the benefits of all retirement allowances in pay status on each ~~of the~~ July ~~first~~ 1 by such actuarially determined percentage. For the purpose of this Section, "available actuarial surplus" shall mean the excess of the actuarial value of the assets of the System over the actuarial accrued liabilities of the System as disclosed in the annual actuarial valuation of the System.
- (c) In the event a member has not been in pay status for twelve (12) full months, the basic cost-of-living increase and the supplemental cost-of-living increase shall be determined as the percentage of the full increase determined in Subsections (a) and (b) ~~above of this Section~~ as follows:

Number of Complete Months  
Member Has Been in Pay Status

Percentage of  
Full Increase

- Less than 3 .....0%
- 3, 4 or 5 .....25%
- 6, 7 or 8 .....50%

•9, 10 or 11 .....75%

- (d) Cost-of-living adjustments provided by this Section shall be applied to the net amount of the member's service-connected disability retirement allowance after all reductions required by Section 3-2-36 have been made. The member's allowance after the adjustments of cost of living provided by ~~the~~this Section at any date in time shall be determined by retroactive computation from the date of initial retirement, and the application of all applicable cost-of-living adjustments to the net allowance which the member is entitled to under Section 3-2-36.
- (e) The Board of Supervisors reserves the right to amend, terminate or modify the post-retirement increases described in Subsection (b) of this Section. Upon termination, no further increases to benefits shall be due or payable to any member or beneficiary. However, any such amendment, termination or modification shall not reduce the amount of benefits then being paid to any member or beneficiary who received benefits payments as of the date of the amendment, termination or modification. Furthermore, no amendment, termination or modification shall reduce the rights of any member as of June 30, 1981, to increases such member was entitled to based upon the terms of the plan in effect on June 30, 1981. (20-81-3; 27-90-3, § 1; 1-93-3; 11-00-3; 26-10-3.)

Section 3-2-45. - Social Security benefit proviso.

If a member does not qualify for or loses primary ~~Social Security~~social security benefits, to which he or she is entitled under ~~the Federal Social Security Act~~, social security because of his or her failure to make application therefor or because of his or her violation of the Social Security Act, such primary ~~Social Security~~social security benefits shall nevertheless be considered as being received by such member for the purposes of this Article. (20-81-3; 27-90-3, § 1.)

Section 3-2-46. - Retention rights.

Participation in the System does not convey the right to be retained in service, or any right or claim to any assets of, or benefit from, the System unless such right has ~~Specifically~~specifically accrued under ~~the provisions of~~ this Article. (20-81-3; 27-90-3, § 1.)

Section 3-2-47. - Vesting on termination of ~~system~~System; non-reversion of funds.

Upon termination of the ~~system~~System or upon complete discontinuance of contributions to the ~~system~~System, the rights of all members to benefits accrued to the date of such termination or discontinuance, to the extent then funded, are non-forfeitable. No portion of the assets of the ~~system~~System shall be used for, or diverted to, purposes other than for the exclusive benefit of the members and their beneficiaries prior to the satisfaction of all liabilities with respect to members and their beneficiaries. (20-81-3.)

Section 3-2-48. - Non-retroactivity to ~~members terminating~~employees retired or terminated prior to July 1, 1981.

With the exception of the benefit adjustment provided under Section 3-2-32(d)(2), the benefits provided by this Article, and ~~the provisions of~~ Section 3-2-~~43~~43, shall not apply to members retired or terminated prior to July 1, 1981. Benefits for such members shall be in accordance with the ordinance in effect prior to July 1, 1981. However, retirement allowances determined thereunder shall be subject to the cost-of-living adjustments provided in Section 3-2-44. (20-81-3.)



Section 3-2-~~49~~49 - Review of adverse decisions.

- (a) Any member adversely affected by a decision of the Board shall receive written notice of said decision and may, within thirty (30) days of receipt of said notice, request in writing a review by the Board of said decision, pursuant to procedures established by the Board.
- (b) Notwithstanding ~~the provisions of~~ Subsection (a) of this Section, upon written application of a member adversely affected by a decision of the Board and for good cause shown, the Board may reconsider such previous decision. This Subsection is to apply retroactively. (20-81-3; 36-83-3.)

Section 3-2-50. ~~Transfer to Senior Executive Service Plan.~~

Repealed by 01-96-3.

Section 3-2-51. ~~Masculine usage includes the feminine.~~

~~The masculine whenever used herein shall include the feminine. (20-81-3.)~~

Repealed by 16-~~3~~3.

Section 3-2-52. - Limitation on annual retirement allowance.

Notwithstanding any other provision of this Article, the annual retirement allowance to which any member may be entitled shall not exceed the limits on benefits set forth in Section 415(b) of the Internal Revenue Code and any regulations issued by the U.S. Department of the Treasury ~~Regulations issued~~ thereunder, and in calculating such limits a member's compensation shall include any differential wage payments for military service as defined under Section 3401(h)(2) of the Internal Revenue Code and paid on or after January 1, 2009. Notwithstanding any provision of ~~this~~the Internal Revenue Code to the contrary, the limitations imposed by this Section apply only to retirement allowances granted under this Article, and not to any retirement allowance provided to any employee under any other Article of this Chapter. Such limits shall be applied annually for the twelve (12-) month period commencing each July 1 and ending the following June 30. A benefit payable other than in the form of an annuity shall not exceed the amount which, when converted to an actuarial equivalent annual benefit, does not exceed the limits on benefits set forth in Section 415(b) of the Internal Revenue Code. Effective June 30, 2000, the mortality tables prescribed by the Uruguay Round Agreement Acts (GATT), as set forth in Internal Revenue Service ~~Rev. Rul.~~Revenue Ruling 2001-62 (superseding and modifying ~~Rev. Rul.~~Revenue Ruling 95-29), or as further updated or modified by the Internal Revenue Service, shall be used in determining the actuarial equivalent amount of such benefit. (27-90-3, § 2; 10-91-3; 21-96-3; 8-03-3; 01-11-3.)

Section 3-2-53. - Distribution of benefits.

Notwithstanding any other provision of this Article, effective for plan years beginning after December 31, 1986, the entire interest of each member shall be distributed to such member not later than the required beginning date specified below, or ~~will~~shall be distributed, beginning not later than the required beginning date, over the life of such member or over the lives of such member and a beneficiary or over a period not extending beyond the life expectancy of such member or the life expectancy of such member and a beneficiary. For this purpose, the term "~~required beginning date~~" ~~means~~ shall mean April 1 of the calendar year following the later of the calendar year in which the member attains ~~age seventy-and-a-half (70½)~~ years of age, or the calendar year in which the member retires. If a member dies after distribution of the member's interest has begun, the remaining portion, if any, of such interest shall be distributed at least as rapidly as under the method of distribution being used as of the date of death. If a member dies before the

distribution of the member's interest has begun, any death benefit shall be distributed within five (5) years after the death of such member, unless (1) any portion of the member's interest is payable to (or for the benefit of) a designated beneficiary, (2) such portion ~~will~~shall be distributed over the life of such beneficiary or over a period not extending beyond the life expectancy of such beneficiary, and (3) if the beneficiary is someone other than the member's surviving spouse, such distributions ~~will~~shall begin not later than one (1) year after the date of the member's death or such later date as the U.S. Secretary of the Treasury may by regulations prescribe. If the beneficiary is the surviving spouse of the member, (1) distribution shall begin on or before the latest of one (1) year after the date of the member's death, such later date as the U.S. Secretary of the Treasury may by regulations prescribe, or the date on which the member would have attained seventy-and-one-half (70½) years of age ~~70½~~ and (2) if the surviving spouse dies before the distributions to such spouse begin, the distribution rules specified in this ~~paragraph~~Section shall be applied as if the surviving spouse were the member. Distributions from the System ~~will~~shall be made in accordance with the requirements of Section 401(a)(9) Internal Revenue Code, including the rules for incidental death distributions set forth at Section 401(a)(9)(G). (27-90-3, § 2; 26-12-3; 50-13-3.)

Section 3-2-54. - Direct rollovers to other plans.

- (a) General. This Section ~~3-2-54~~ applies to distributions made on or after January, 1, 1993. Notwithstanding any provision of the System to the contrary that would otherwise limit a distributee's election under this Section ~~3-2-54~~, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. However, to the extent that any portion of the amount of the rollover is comprised of after-tax contributions, the distribution may only be rolled over to an eligible retirement plan that separately accounts for after-tax contributions.
- (b) ~~Definition.~~ Definitions.
  - (1) *Eligible rollover distribution.* ~~An eligible rollover distribution is~~ shall mean any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includible in gross income.
  - (2) *Eligible retirement plan.* ~~An eligible retirement plan is~~ shall mean any one of the following that accepts the distributee's eligible rollover distribution: an individual retirement account described in Section 408(a) of the Internal Revenue Code; an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; an annuity plan described in Section 403(a) of the Internal Revenue Code; a qualified trust described in Section 401(a) of the Internal Revenue Code; an annuity contract described in Section 403(b) of the Internal Revenue Code; an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state; or effective for distributions made after December 31, 2007, a Roth IRA described in Section 408A of the Internal Revenue Code, provided the eligible rollover distribution is considered a "qualified rollover contribution" under Section 408A(e) ~~of the Internal Revenue Code~~. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan ~~is~~ shall be an individual retirement account or individual retirement annuity.



- (3) *Distributee*. ~~A distributee includes~~ shall mean a member or former member. In addition, the member's or former member's surviving spouse, and the member's or former member's spouse or former spouse who is entitled to receive benefits from the System, ~~are~~ shall be distributees with regard to the interest of the spouse or former spouse. Effective for distributions on or after January 1, 2010, a distributee ~~includes~~ also shall include a non-spouse beneficiary of a deceased member or former member who may make an eligible rollover distribution in a direct trustee-to-trustee transfer to an ~~"inherited"~~ individual retirement account.
- (4) *Direct rollover*. ~~A direct rollover is~~ shall mean a payment by the System to the eligible retirement plan specified by the distributee. (45-93-3; 21-96-3; 8-03-3; 01-11-3)

Section 3-2-55. - Additional retirement allowance.

(a) ~~For purposes of this section only, the following words and phrases shall have the following meanings:~~ Definitions.

- (1) *Active member* shall mean a member of ~~this~~ the System who is an employee on July 1, 1995, or who becomes an employee thereafter, and whose membership in ~~this~~ the System has not ceased at any time from either July 1, 1995, or from when he or she became an employee (whichever is later), until the effective date of his or her subsequent retirement.
- (2) *Retired member* shall mean a member of ~~this~~ the System who is receiving a retirement allowance on July 1, 1995. ~~The phrase "member of this 1995, or whose effective date of retirement is on or before July 1, 1995. A member of the~~ System who is receiving a retirement allowance ~~"includes those members~~ shall include any member whose effective date of retirement is on or before July 1, 1995.
- (3) *Retirement allowance* shall mean a normal service retirement allowance, an early service retirement allowance, an ordinary disability retirement allowance, a deferred ~~annuity under the provisions of Section 3-2-38(b)~~ vested benefit, or a spouse retirement allowance ~~under the provisions of Section 3-2-42.~~
- (4) *Base annual retirement allowance* ~~means~~ shall mean the initial calculation of a member's or spouse's annual retirement allowance without regard for any deductions for withholding or other benefit elections or adjustments under Section 3-2-7. For a member ~~retired pursuant to Section 3-2-31(a) (taking~~ normal service retirement under Section 3-2-31(a), this is the allowance calculated under Section 3-2-32(a)(1) ~~(for a member in Plan A member)~~ or under Section 3-2-32(a)(2) (for a member in Plan B member); for a member ~~retired pursuant to Section 3-2-31(b) (taking~~ early service retirement ~~), under Section 3-2-32(b), this is~~ the allowance calculated under Section 3-2-32(b); for a member retired on account of ordinary disability under Section 3-2-33, this is the allowance calculated under ~~Section 3-2-34; for a member receiving a deferred annuity, the allowance calculated under the provisions of~~ Section 3-2-38(b); and for a spouse receiving a spouse retirement allowance, this is the allowance calculated under ~~the provisions of~~ Section 3-2-42.
- (5) *Adjusted base annual retirement allowance* shall mean the base annual retirement allowance of a retired member or of the spouse of a member receiving the base spouse annual retirement allowance ~~provided~~ under Section 3-2-42, as increased by any cost-of-living adjustments applied to the member's or spouse's retirement allowance from the effective date of his or her retirement, ~~or of his or her~~ election of the spouse retirement allowance, through July 1, 1995.

- (6) ~~A member is "~~ Member in service ~~" for purposes of this Section when he or she is~~ shall mean ~~a~~ member of ~~this~~the System.
- (b) The adjusted base annual retirement allowance of each retired member or spouse receiving a retirement allowance on July 1, 1995, shall be increased by three percent (3%), effective July 1, 1995 (modified adjusted base annual retirement allowance). Adjustments to the retired member's or spouse's retirement allowance made under ~~the provisions of~~ this Article after July 1, 1995, shall be computed on the basis of the modified adjusted base annual retirement allowance.
- (c) When an active member retires, or the eligible spouse of an active member elects to receive the spouse retirement allowance after July 1, 1995, after his or her base annual retirement allowance has been computed under the ~~provisions of the~~ applicable ~~section~~Section of this Article, the resulting base annual retirement allowance shall be increased by three percent (3%) (initial base annual retirement allowance). Adjustments to the member's or spouse's retirement allowance under ~~the provisions of~~ this Article after July 1, 1995, shall be computed on the basis of ~~his or her~~the initial base annual retirement allowance.
- (d) If a member is entitled to the three percent (3%) increase provided for by either Subsection (b) or (c) of this Section, and if at the time he or she is entitled to such increase, he or she is also eligible to receive the ~~Pre-62 Compensating Benefit~~pre-62 compensating benefit under Section 3-2-32(a)(3)(A) or the ~~Pre-Social Security Benefit~~pre-social security benefit under Section 3-2-32(a)(3)(B4), his or her ~~Pre-62 Compensating Benefit or Pre-Social Security Benefit~~pre-62 compensating benefit or pre-social security benefit shall also be increased by three percent (3%).
- (e) ~~Effect of separation~~Separation from service.
- (1) A member who:
- (A) Separated from service other than by death or retirement with five (5) or more years of creditable service in ~~this~~the System prior to July 1, 1995, and
- (B) Has not withdrawn his or her accumulated contributions as of July 1, 1995, and
- (C) Subsequently applies for and is determined to be eligible for a deferred ~~annuity~~vested benefit after July 1, 1995,
- shall have his or her or her deferred ~~annuity~~vested benefit computed mutatis mutandi in the same manner as an active member under ~~subsection~~Subsection (c) of this Section.
- (2) A member in service on or after July 1, 1995, who:
- (A) Subsequently separates from service other than by death or retirement with five (5) or more years of creditable service in ~~this~~the System, and
- (B) Does not withdraw his or her or her accumulated contributions, and
- (C) Subsequently applies for and is determined to be eligible for a deferred ~~annuity~~vested benefit,
- shall have his or her deferred ~~annuity~~vested benefit computed mutatis mutandi in the same manner as an active member under ~~subsection~~Subsection (c) of this Section.

- (3) A member in service on or after July 1, 1995, who,
- (A) Subsequently separates from service other than by death or retirement with five (5) or more years of creditable service in ~~this~~the System, and
  - (B) Does not withdraw his or her accumulated contributions, and
  - (C) Thereafter, returns to service and again becomes a member of ~~this~~the System, and
  - (D) Subsequently applies for and is determined to be eligible for a normal service, early-service or ordinary disability retirement allowance, ~~or for a deferred annuity vested benefit~~,
- shall have his or her allowance or deferred ~~annuity vested benefit~~ computed mutatis mutandi in the same manner as an active member under ~~subsection~~Subsection (c) of this Section.
- (4) A member in service on or after July 1, 1995, who
- (A) Thereafter separates from service, and
  - (B) Withdraws his or her accumulated members' contributions, and
  - (C) Subsequently returns to service and again becomes a member of ~~this~~the System, and
  - (D) At that time makes arrangements to purchase credit for all of his or her previous service in ~~this~~the System under ~~the provisions of this Ordinance~~Article, and
  - (E) Thereafter applies for and is determined to be eligible for a normal service, early-service or ordinary disability retirement, ~~or for a deferred annuity vested benefit~~,
- shall have his or her allowance or deferred ~~annuity vested benefit~~ computed mutatis mutandi in the same manner as an active member under ~~subsection~~Subsection (c) of this Section.
- (f) A member's spouse who is receiving an allowance under the joint and last survivor option provided by Section 3-2-32(c), on July 1, 1995, shall have such allowance increased by three percent (3%), effective July 1, 1995. Adjustments to such allowance under ~~the provisions of~~ this Article after July 1, 1995, shall be computed on the basis of this increased allowance.
- (g) Notwithstanding the sixty percent (60%) of average final compensation limit contained in Section 3-2-34, the initial base annual retirement allowance of an active member who becomes eligible to receive an ordinary disability retirement allowance and who is entitled to the increase provided by ~~subsection~~Subsection (c) of this Section, may exceed sixty percent (60%), but shall not exceed sixty-one ~~and~~ and eight-tenths percent (61.8%); of his or her average final compensation.
- (h) Notwithstanding any provision of this Section to the contrary, no adjustment under ~~the provisions of~~ this Section shall be made which would violate the limitations provided by Section 3-2-52 concerning the limitations imposed by Section 415 of the Internal Revenue Code and ~~the any U.S.~~ Treasury regulations issued thereunder; provided, ~~however,~~ that any adjustment under ~~the provisions of~~ this Section may be made up to those limitations. (12-95-3; 11-00-3.)

Section 3-2-56. - Spousal acknowledgment.

Any application for service or disability retirement allowance under this Article shall include a statement made by the spouse of the member, if any, acknowledging, in the presence of a notary public,

that the spouse has read and understands the provisions of this Article concerning allowance and payment options and the allowance and payment options, if any, the member has elected to receive. (12-98-3.)

Section 3-2-57. - Deferred Retirement Option Program.

Effective July 1, 2005, there is hereby established a Deferred Retirement Option Program ("~~DROP~~") for eligible members of ~~this~~the System. Members of the System in service who are eligible for normal service retirement are eligible to elect to participate in this program.

(a) Definitions.

- (1) *DROP period* ~~means~~shall mean the three-~~(3)~~ year period immediately following the commencement of the member's participation in the DROP.
- (2) *Eligible member* ~~means~~shall mean any member who has reached, or will reach within sixty (60) days, his or her normal retirement date as defined in §Section 3-2-1(n).

(b) Election to participate.

- (1) An eligible member may participate in the DROP only once. An eligible member who desires to participate in the DROP ~~must~~shall file an application with the Fairfax County Retirement Administration Agency not less than sixty (60) days prior to the date of the commencement of the member's participation in the DROP.
- (2) A member's election to participate in the DROP is irrevocable, with the exception that a member who elects to participate in the DROP may revoke that election prior to the commencement of his or her DROP period; once revoked, a member may not then elect to participate in the DROP for a period of at least twelve (12) months from the date of his or her revocation.
- (3) At the time of an eligible member's election to participate in the DROP, he or she ~~must~~shall make an election in writing pursuant to §Section 3-2-32(c) as to whether or not to receive a reduced retirement allowance in order to provide a retirement allowance for his or her spouse after the member's death.
- (4) An eligible member who elects to participate in the DROP ~~will~~shall agree to do so for a period of three (3) years.
- (5) Subject to any limitation on the number of accrued sick leave hours that may be converted to creditable service as provided in Section 3-2-1(a)(2), an eligible member who elects to participate in the DROP shall, at the time of his or her election to participate in the DROP, make an election in writing as to whether he or she wishes to convert all of his or her available accrued sick leave to creditable service or to convert all but forty (40) hours of his or her accrued sick leave to creditable service. Sick leave that is either carried over or that accrues during the DROP period shall not be converted to creditable service at the conclusion of the DROP period.

(c) Continued employment.

- (1) A participating DROP member shall, upon commencement of his or her DROP period, continue to work for the County or School Board in the position he or she held before the effective date of his or her election to participate in the DROP ~~-program~~. Thereafter, the

participating DROP member ~~will~~shall perform the services of that position or any other position to which he or she is promoted or transferred.

- (2) A participating DROP member ~~will~~shall continue to accrue annual and sick leave and, if eligible, compensatory time during the DROP period. At the conclusion of the DROP period, the member ~~will~~shall receive the payment for his or her accrued annual and compensatory leave that he or she would have received upon retirement. In no case ~~will~~shall a participating DROP member receive payment for his or her accrued annual and compensatory leave at the commencement of the member's participation in the DROP.
  - (3) A participating DROP member ~~will~~shall continue to remain eligible for health and life insurance benefits provided by the County or the School Board to its employees and ~~will~~shall remain eligible to participate in the County's or ~~the~~ School Board's deferred compensation plan. The deductions from the salary of a participating DROP member for health and life insurance ~~benefit will~~benefits shall be the same deductions that would have been taken had the participating DROP member been an active County or School Board employee, not the deductions that would be taken from the retirement benefits and allowances of a retiree.
  - (4) All County or School Board personnel policies and regulations shall continue to apply to a participating DROP member after the commencement of his or her DROP period. A participating DROP member ~~will~~shall remain eligible for annual merit pay increments and promotions during the DROP period. However, a participating DROP member's salary during his or her DROP period ~~will~~shall not be included in the computation of the member's average final compensation. A participating DROP member ~~is~~shall also be subject to the County's disciplinary policies and regulations.
  - (5) If a participating DROP member's continued employment with ~~Fairfax~~the County or the School Board is interrupted by military service, there ~~will~~shall be no interruption of the member's participation in the DROP. During the period of the participating DROP member's military service, the member's retirement benefits and allowances ~~will~~shall continue to be paid into the participating member's DROP account until the member's DROP period ends. At the end of the DROP period, the member's DROP account balance ~~will~~shall be paid to the member whether or not he or she has returned to his or her former County or School Board position, and the member ~~will~~shall begin to receive his or her normal retirement benefits.
  - (6) Except as otherwise set forth herein, a participating DROP member's continued service ~~will~~shall be deemed to be normal service retirement and ~~will~~shall not count as creditable service with the System.
  - (7) Upon commencement of a participating DROP member's DROP period, the County or the School Board ~~will~~shall cease to withhold contributions to the System from the participating DROP member's salary.
  - (8) The salary received by a participating DROP member during his or her DROP period ~~will~~shall not be included by the County or the School Board in the base that is used to determine the amount of the County's or the School Board's employer contributions to the System.
- (d) DROP account.
- (1) Upon commencement of the participation of a member of either Plan A or Plan B, whose ~~county~~County or ~~school board~~School Board employment commenced by reporting for work

before January 1, 2013, in the DROP, the member's service retirement allowance pursuant to [§Section 3-2-32\(a\)\(1\) or \(2\)](#) and the additional retirement allowance pursuant to [§Section 3-2-32\(a\)\(3\)](#) ~~will~~ [or \(4\) shall](#) be paid into the member's DROP account. Upon commencement of the participation of a member of either Plan C or Plan D, whose ~~county~~ [County](#) or ~~school board~~ [School Board](#) employment commenced by reporting for work on or after January 1, 2013, in the DROP, the member's service retirement allowance pursuant to [§Section 3-2-32\(a\)\(1\) or \(2\)](#) ~~will~~ [shall](#) be paid into the member's DROP account; the additional retirement benefits provided for in [§Section 3-2-32\(a\)\(3\) and \(4\)](#) shall not be credited to the DROP accounts of members of Plans C and D, although members of those ~~plans~~ [Plans](#) shall remain eligible to receive the additional retirement benefits provided for in [§Section 3-2-32\(a\)](#) upon the completion of their DROP period, if they then meet the requirements for eligibility for such benefits set forth in [§Section 3-2-32\(a\)\(3\) and \(4\)](#). The initial amount credited to a member's DROP account ~~will~~ [shall](#) be computed based on his or her average final compensation as of the date of the commencement of the DROP period.

- (2) The initial monthly amount ~~will~~ [shall](#) be increased each July 1 based upon the annual cost-of-living adjustment provided to retirees pursuant to [§Section 3-2-44](#). Any other changes that occur during the DROP period that would result in an alteration of the participating DROP member's retirement ~~benefits and~~ allowances [and benefits](#) if he or she were retired ~~will~~ [shall](#) also result in adjustments to the monthly amount credited to a participating DROP member's DROP account.
  - (3) The participating DROP member's DROP account ~~will~~ [shall](#) be credited with interest at an annual rate of five percent [\(5%\)](#), compounded monthly. Interest ~~will~~ [shall](#) not be pro-rated for any period less than a full month.
  - (4) Contributions by the County or the School Board and the participating DROP member into the System for the participating DROP member ~~will~~ [shall](#) cease.
  - (5) Amounts credited to a participating DROP member's DROP account ~~will~~ [shall](#) not constitute annual additions under ~~26 U.S.C. § 415~~ [Section 415 of the Internal Revenue Code](#).
  - (6) A participating DROP member's DROP account ~~will~~ [shall](#) not be an account that is separate and distinct from the assets of the System; a participating DROP member's DROP account balance ~~will~~ [shall](#) remain part of the assets of the System.
- (e) Cessation of County or School Board employment.
- (1) At the conclusion of a participating DROP member's [three-year](#) DROP period, the member's County or School Board employment ~~will~~ [shall](#) automatically cease. The participating DROP member shall then begin to receive normal service retirement ~~benefits and~~ allowances [and benefits](#) computed based upon his or her average final compensation at the time of the commencement of the DROP period and his or her creditable service at the time of the commencement of the DROP period, plus cost-of-living increases provided to retirees and any other benefit improvements that may have been granted to retirees during the participating DROP member's DROP period. At least [sixty \(60\)](#) days prior to the conclusion of a participating DROP member's DROP period, the member ~~must~~ [shall](#) make one of the following elections concerning payment of his or her DROP account balance:
    - (A) The member may receive payment of his or her DROP account balance as a lump sum.

- (B) The member may elect to roll over his or her DROP account balance into a qualified retirement plan, such as an IRA.
  - (C) The member may elect to receive payment of a portion of his or her DROP account balance and roll over the remaining portion into a qualified retirement plan, such as an IRA. If the member elects this method of receiving his or her DROP account balance, he or she must specify, in writing, the specific amount to be paid as a lump sum and the specific amount to be rolled over.
  - (D) The member may elect to use his or her DROP account balance to increase his or her monthly retirement ~~benefits and~~ allowances and benefits. The amount of the increase ~~will~~shall be determined based on the actuarial equivalent of the member's DROP account balance.
  - (E) The member may divide his or her DROP account balance in half, and may then elect to use ~~50~~fifty percent ~~(50%)~~ of his or her DROP account balance to increase his or her monthly retirement ~~benefits and~~ allowances and benefits, and to receive the remainder in any manner listed in ~~paragraphs~~Subparagraphs (A), (B) and (C) above. In the event that the participating DROP member does not make the election required by this ~~section, Subsection, the~~ DROP account balance ~~will~~shall be used to increase his or her monthly retirement ~~benefits and~~ allowances and benefits. The amount of the increase ~~will~~shall be determined based on the actuarial equivalent of the member's DROP account balance.
  - (2) A participating DROP member may terminate his or her County or School Board employment at any time, in which case the effective date of the member's termination of his or her County or School Board employment shall be treated as the end of the DROP period for ~~the provisions~~all purposes of this ~~section~~Section.
  - (3) In the event that the employment of a participating DROP member is terminated by the County or the School Board during the DROP period for any reason, the effective date of the member's separation from County service shall be treated as the end of the DROP period for all purposes of this Section.
- (f) Death or disability during DROP period.
- (1) If a participating DROP member dies during the DROP period, the participating DROP member's designated beneficiary on record with the System shall receive payment of the member's DROP account balance and the member's accumulated contributions; if there is no designated beneficiary on record with the System, payment of these amounts shall be made to the participating DROP member's estate. In the event that the participating DROP member has elected a joint and last survivor option pursuant to the terms of §Section 3-2-32(c), the participating DROP member's surviving spouse ~~will~~shall receive payment of the participating DROP member's DROP account balance and ~~will~~shall begin to receive ~~benefits and~~retirement allowances and benefits pursuant to the joint and last survivor option election of the participating DROP member.
  - (2) If a participating DROP member becomes disabled during the DROP period, the participating DROP member ~~will~~shall receive:



- (A) In the case that a participating DROP member suffers a disability that would be considered an ordinary disability as defined in ~~§Sections~~ Sections 3-2-33 and 3-2-~~35~~35, the effective date of the member's disability ~~will~~shall be treated as the end of the participating DROP member's DROP period.
- (B) In the case that a participating DROP member suffers a service-connected disability as set forth in §Section 3-2-36, the participating DROP member may elect either (i) to receive the service-connected disability retirement ~~benefits and~~ allowances and benefits to which he or she would otherwise be entitled or (ii) to receive the normal service retirement ~~benefits and~~ allowances and benefits to which he or she would be entitled plus his or her DROP account balance. An election to receive service-connected disability retirement ~~benefits and~~ allowances ~~or severe service-connected disability retirement~~ and benefits shall constitute a waiver of the member's right to receive any amounts credited to his or her DROP account balance.
- (g) Execution of documents and adoption of rules and regulations. The County Executive is authorized to execute all documents necessary or appropriate to operate the DROP including, but not limited to, the establishment of a trust within which the participating DROP members' DROP accounts shall be held and administered. The Board ~~of Trustees~~ is also authorized to adopt rules and regulations governing the DROP. Any documents executed by the County Executive shall be approved for form by the County Attorney prior to execution. (20-05-3; 40-08-3; 41-08-3; 27-10-3; 26-12-3.)

Division ~~9-9~~ 9 - Benefit Restoration Plan:

Section 3-2-58. - Benefit Restoration Plan.

- (a) There is hereby established a Benefit Restoration Plan for the System.
- (b) Purpose and intent; rule of construction.
  - (1) In establishing this Benefit Restoration Plan, the Board of Supervisors intends to establish and maintain a "qualified governmental excess benefit arrangement," as defined and authorized by Section 415(m) of the federal Internal Revenue Code ~~Section 415(m), 26 U. S. C. Section 415(m), and~~ as is permitted by ~~Va. Code Ann.~~ Section 51.1-1302.1302 of the Code of Virginia. The purpose of this Benefit Restoration Plan is to restore, through a non-qualified arrangement, the benefits lost by the application of the limitation on annual benefits under Section 415(b) of the Internal Revenue Code ~~Section 415(b)~~ as applicable to governmental plans. This Benefit Restoration Plan shall exist in addition to all other retirement, pension, or other benefits available to ~~Participants~~ participants, including the benefits established by ~~this~~ the System.
  - (2) This ~~section~~ Section shall be construed to ensure compliance with ~~the provisions of~~ federal and state law, and any regulations promulgated thereunder, governing such qualified governmental excess benefit arrangements, including, but not limited to Section 415(m) of the Internal Revenue Code ~~Section 415(m), and~~ ~~Va. Code Ann.~~ Sections 51.1-1302, 51.1-1303, and 51.1-1304.1304 of the Code of Virginia, as in effect at the time of the adoption of this ~~section~~ Section and as subsequently amended.
- (c) Definitions.



- (1) *Administrator or Plan Administrator* shall mean the Board ~~of Trustees of the Employees' Retirement System~~, which is responsible for the general administration and operation of the Benefit Restoration Plan and for making effective the provisions of this Section. Under the oversight of the Board ~~of Trustees~~, the Executive Director ~~of the Retirement Administration Agency~~ shall be responsible for the day to day operation and administration of the Benefit Restoration Plan.
- (2) *Beneficiary* shall mean the person or persons entitled under ~~the provisions of this Article governing this System~~ to receive any benefits payable after the ~~Participant~~ participant's death.
- (3) ~~Board~~ Benefit Restoration Plan or Plan shall mean the ~~Board of Trustees of the Employees' Retirement~~ Benefit Restoration Plan for the System established ~~under~~ by this ~~Article~~ Section.
- (4) ~~Internal Revenue Code means the federal Internal Revenue Code, as the same may be amended from time to time, and, to the extent not inconsistent therewith, regulations issued there under.~~ (5) ~~Effective Date. The effective~~ date shall mean the date of this ~~section is its date of Section's~~ adoption [June 5, 2006].
- (6) ~~Eligible Member~~ member shall mean a retired member of the ~~Employees' Retirement System~~ and whose benefits thereunder are reduced by the application of the limitations on annual benefits under Section 415(b) of the Internal Revenue Code ~~Section 415(b)~~ as applicable to governmental plans.
- (7) ~~Member shall mean a member of the Employees' Retirement System established under this Article.~~
- (8) ~~Employer shall mean an employer as defined under the Employees' Retirement System established under this Article.~~ (9) ~~6~~ Enabling statute shall mean Chapter 13 of Title 51.1 of the Code of Virginia ~~Code (1950)~~, as amended.
- (10) ~~Grantor Trust~~ trust shall mean the trust fund described in ~~sub-section~~ Subsection (i)(3) of this Section and established and maintained for the Benefit Restoration Plan.
- (11) ~~Participant~~ shall mean an ~~Eligible Member~~ eligible member qualified to participate in the Benefit Restoration Plan.
- (12) ~~Benefit Restoration Plan or Plan shall mean the Benefit Restoration Plan for the System established by this Section.~~
- (13) ~~Plan Sponsor~~ sponsor shall mean the Board of Supervisors ~~of Fairfax County, Virginia.~~
- (14) ~~10~~ Year year shall mean the twelve (12-) month period beginning on ~~the first day of July.~~ 1.
- (15) ~~11~~ Restoration ~~Death-Benefit~~ death benefit shall mean the benefit due the ~~Beneficiary~~ beneficiary of a ~~Participant~~ participant under the Benefit Restoration Plan as determined under this Section.
- (16) ~~12~~ Restoration ~~Retirement-Benefit~~ retirement benefit shall mean the benefit due a ~~Participant~~ participant or his or her ~~Beneficiary~~ beneficiary under the Benefit Restoration Plan determined under this Section.

~~(17) Retirement System or System shall mean the Employees' Retirement System established under this Article.~~

(d) Eligibility and ~~Participation~~ participation.

(1) Eligibility and ~~Date~~ date of ~~Participation~~ participation. Each ~~Eligible Member~~ eligible member shall be a ~~Participant~~ participant in ~~this~~ the Benefit Restoration Plan commencing with the date he or she first becomes, or again becomes, an ~~Eligible Member~~ eligible member.

(2) Length of ~~Participation~~ participation. Each ~~Eligible Member~~ eligible member who becomes a ~~Participant~~ participant shall be or remain a ~~Participant~~ participant for so long as he or she is entitled to future benefits under the terms of ~~this~~ the Benefit Restoration Plan.

(e) Restoration ~~Retirement Benefit (1)~~ retirement benefit. Subject to the terms and conditions set forth in this Section, a ~~Participant~~ participant who retires or is retired under the System and who is entitled to the payment of benefits under the System shall be entitled to a ~~Restoration Retirement Benefit~~ restoration retirement benefit, generally expressed as a benefit payable monthly for the life of the ~~Participant~~ participant and commencing at the applicable time provided under this Article, equal to the excess, if any, of:

(~~i~~1) The amount of the ~~Participant~~ participant's retirement allowance under the ~~Retirement~~ System, determined without regard to the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, over

(~~ii~~2) The amount of the ~~Participant~~ participant's retirement allowance under the ~~Retirement~~ System.

To the extent that the ~~Participant~~ participant's retirement allowance payable under the ~~Retirement~~ System is increased at any time due to increases in limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, whether by statute, regulation, actions of the ~~U.S.~~ Secretary of the ~~U.S.~~ Treasury or his or her delegate or otherwise, the ~~Participant's Restoration Retirement Benefit~~ participant's restoration retirement benefit shall be reduced correspondingly.

(f) Death ~~Benefit~~ benefit.

(1) Death after ~~Benefit Commencement~~ benefit commencement. If a ~~Participant~~ participant dies after his or her ~~Restoration Retirement Benefit~~ restoration retirement benefit commences to be paid, the only benefits payable under the Benefit Restoration Plan to his or her ~~Beneficiary~~ beneficiary after his or her death shall be those, if any, provided under the form of payment being made to him or her at his or her death.

(2) Death before ~~Benefit Commencement~~ benefit commencement. If a ~~Participant~~ participant dies before his or her ~~Restoration Retirement Benefit~~ restoration retirement benefit commences to be paid, the only benefit payable under the Benefit Restoration Plan with respect to him or her shall be the ~~Restoration Death Benefit~~ restoration death benefit, if any, provided in ~~sub-section~~ Subsection (f)(3) of this Section.

(3) Restoration ~~Death Benefit~~ death benefit. Subject to the terms and conditions set forth herein, if a ~~Participant~~ participant dies on or after the ~~Effective Date~~ effective date and before his or her ~~Restoration Retirement Benefit~~ restoration retirement benefit commences to be paid, his or her

~~Beneficiary~~beneficiary shall be entitled to a ~~Restoration-Death-Benefit~~restoration death benefit as follows:

(A) If his or her ~~Beneficiary~~beneficiary is entitled to receive any death benefit under the ~~Retirement~~ System, such ~~Beneficiary~~beneficiary shall be entitled to receive as a ~~Restoration-Death-Benefit~~restoration death benefit under the Benefit Restoration Plan an amount equal to the excess, if any, of:

- (i) The amount of such death benefit under the ~~Retirement~~ System, determined without regard to the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, over
- (ii) The actual amount of such death benefit under the ~~Retirement~~ System.

To the extent that the ~~Participant~~participant's accrued benefit or any death benefit payable under the ~~Retirement~~ System is increased at any time due to increases in the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, whether by statute, ~~regulations~~regulation, actions of the U.S. Secretary of the Treasury or his or her delegate or otherwise, the ~~Participant's Restoration-Death-Benefit~~participant's restoration death benefit shall be reduced correspondingly.

- (g) Vesting. ~~(1)——Vesting. A Participant's Restoration Retirement Benefit or Restoration Death Benefit~~A participant's restoration retirement benefit or restoration death benefit, as the case may be, shall be vested at the time of his or her retirement under the ~~Retirement~~ System or death, but only to the extent, and determined in the manner, that such ~~Participant~~participant has a vested and non-forfeitable right to his or her retirement allowance under the ~~Retirement~~ System.
- (h) Payment of ~~Benefits~~benefits.

- (1) ~~Time~~Timing and ~~Manner~~manner for ~~Payment of Benefits. A Participant's Restoration Retirement Benefit, or the Restoration Death Benefit~~payment of benefits. A participant's restoration retirement benefit, or the restoration death benefit, shall be payable at the same time and in the same manner as the ~~Participant~~participant's retirement allowance or comparable death benefit (other than his or her accumulated contributions or contribution refund death benefit) is paid under the ~~Retirement~~ System, whether as elected by the ~~Participant~~participant or otherwise payable. For a ~~Member~~member who is receiving a retirement allowance under the System on the ~~Effective Date~~effective date, and who would immediately be an ~~Eligible Member~~eligible member upon the ~~Effective Date~~effective date, such ~~Member~~member shall immediately commence receiving a ~~Restoration Retirement Benefit~~restoration retirement benefit on a prospective basis.
- (2) Discretionary ~~Use~~use of ~~Other Methods of Payment~~other methods of payment. In the sole discretion of the Administrator, monthly payment amounts of less than \$100.00, or such amount as the Administrator may from time to time determine, may be paid on an annual or semi-annual basis, in arrears and without interest.
- (3) Benefit ~~Determination~~determination and ~~Payment Procedure~~payment procedure. The Administrator shall make all determinations concerning eligibility for benefits under the Benefit Restoration Plan, the time or terms of payment, and the form or manner of payment to the ~~Participant~~participant (or the ~~Participant's Beneficiary~~participant's beneficiary in the event of the death of the ~~Participant~~participant). The Administrator shall promptly notify the ~~Employer~~employer and, where payments are to be made from a ~~Grantor Trust~~grantor trust, the

trustee thereof, of each such determination that benefit payments are due and provide to the ~~Employer~~employer or trustee such other information necessary to allow the ~~Employer~~employer or trustee to carry out said determination, whereupon the ~~Employer~~employer or trustee shall pay such benefits in accordance with the Administrator's determination.

- (4) Payments to ~~Minors~~minors and ~~Incompetents. If a Participant or Beneficiary~~incompetents. If a participant or beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits ~~will~~shall be paid to such person as the Administrator may designate for the benefit of such ~~Participant or Beneficiary~~participant or beneficiary. Such payments shall be considered a payment to such ~~Participant or Beneficiary~~participant or beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Benefit Restoration Plan.
  - (5) Distribution of ~~Benefit When Distributee Cannot Be Located~~benefit when distributee cannot be located. The Administrator shall make all reasonable attempts to determine the identity and/or whereabouts of a ~~Participant~~participant or his or her ~~Beneficiary~~beneficiary entitled to benefits under the Benefit Restoration Plan, including the mailing by certified mail of a notice to the last known address shown on the ~~Employer's~~employer's or the Administrator's records. If the Administrator is unable to locate such ~~a~~ person entitled to benefits hereunder, or if there has been no such claim made for such benefits, the ~~Employer~~employer shall continue to hold the benefit due such person, subject to any applicable statute of escheats.
- (i) Funding.
- (1) The undertaking to pay the benefits hereunder shall be unfunded obligations payable solely from the general assets of the ~~Employer's~~employer's and subject to the claims of the ~~Employer's~~employer's creditors.
  - (2) Except as provided in a ~~Grantor Trust~~grantor trust established as permitted ~~in sub-section under Subsection (i)(3) of this Section~~, nothing contained in the Benefit Restoration Plan and no action taken pursuant to ~~the provisions of~~ this Section shall create or be construed to create a trust of any kind of a fiduciary relationship between the ~~Employer~~employer and the ~~Participant~~participant or his or her ~~Beneficiary~~beneficiary or any other person or to give any ~~Participant or Beneficiary~~participant or beneficiary any right, title, or interest in any specific asset or assets of the ~~Employer~~employer. To the extent that any person acquires a right to receive payments from the ~~Employer~~employer under the Benefit Restoration Plan, such rights shall be no greater than the right of any unsecured general creditor of the ~~Employer~~employer.
  - (3) Use of ~~Grantor Trust Permitted~~grantor trust permitted. Notwithstanding any provision of this Section to the contrary, the Benefit Restoration Plan Sponsor may in its sole discretion elect to establish and fund a ~~Grantor Trust~~grantor trust for the purpose of providing benefits under the Benefit Restoration Plan.
- (j) Plan ~~Administrator~~administrator.
- (1) The Plan Administrator ~~has~~shall have full and complete authority and discretion to control and manage the operation of and shall decide all matters under the Benefit Restoration Plan pursuant to this Section and the ~~Enabling Statute~~enabling statute. The Administrator ~~has~~shall have any and all powers as may be necessary or advisable to discharge its duties under the

Benefit Restoration Plan including the power and authority to interpret the terms of the Benefit Restoration Plan.

- (2) The Plan Administrator ~~is shall be~~ responsible for performing the duties required for the operation of the Benefit Restoration Plan, and ~~is shall be~~ responsible for supervising the performance of any other persons who may assist in the performance of the Plan Administrator's responsibilities under this Section and the ~~Enabling Statute~~ enabling statute.
  - (3) To enable the Plan Administrator to perform its responsibilities, ~~Employer~~ employer(s) shall promptly provide to the Plan Administrator complete and accurate information on any matter that is required by the Administrator in order to make any decision or determination under the Benefit Restoration Plan. The Plan Administrator shall rely upon this information supplied by the ~~Employer~~ employer, and shall have no duty or responsibility to verify this information.
  - (4) Except as prohibited by law or by this Section, the Plan Administrator may delegate any of its duties to the Executive Director ~~of the Retirement Administration Agency~~. The Plan Administrator may contract with any person to provide services to assist in the administration of the Benefit Restoration Plan. The Plan Administrator ~~must~~ shall make such contracts in compliance with all applicable ~~State~~ state and local laws and regulations. Any person other than the Plan Administrator who performs services regarding the Benefit Restoration Plan ~~is shall be~~ subject to the supervision and direction of the Plan Administrator, and ~~does~~ shall not have the authority to control the operation of the Plan.
- (k) Termination and ~~Amendment~~ amendment of ~~the~~ Benefit Restoration Plan.
- (1) Termination ~~of the Benefit Restoration Plan~~. The Board of Supervisors ~~of the County of Fairfax, Virginia,~~ hereby reserves the right to terminate this Benefit Restoration Plan at any time; ~~provided,~~ that no such termination shall reduce, suspend, or terminate the ~~Restoration Retirement Benefit or Restoration Death Benefit~~ restoration retirement benefit or restoration death benefit otherwise payable to a ~~Participant or Beneficiary~~ participant or beneficiary hereunder as of the date of such termination.
  - (2) Amendment ~~of the Benefit Restoration Plan~~. The Board of Supervisors ~~of the County of Fairfax, Virginia,~~ hereby reserves the right to amend this Benefit Restoration Plan at any time; ~~provided,~~ that no such amendment shall reduce, suspend, or terminate the ~~Restoration Retirement Benefit or Restoration Death Benefit~~ restoration retirement benefit or restoration death benefit otherwise payable to a ~~Participant or Beneficiary~~ participant or beneficiary hereunder as of the date of such ~~termination~~ amendment.
- (l) ~~Miscellaneous. (1)~~ — Non-assignability.

The interests of each ~~Participant~~ participant hereunder in the Benefit Restoration Plan are not subject to the claims of the ~~Participant~~ participant's creditors; and neither the ~~Participant~~ participant nor his ~~Beneficiary or her beneficiary~~, shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Benefit Restoration Plan, which payments and interest are expressly declared to be non-assignable and non-transferable. ~~(2)~~ — Notwithstanding the ~~preceding sub-section~~ foregoing, the Plan Administrator shall honor any process for a debt to the ~~Employer~~ employer who has employed the ~~Participant~~ participant and any administrative actions pursuant to ~~Va. Code Ann. Sections~~ Section 63.2-1900, 1900 ~~et seq. of the Code of Virginia,~~ or any court process to enforce a child or spousal support obligation, in the manner as described in Section 3-2-6 ~~of this Article~~ mutatis mutandi. Restoration ~~Retirement Benefits and/or Restoration Death Benefits~~ retirement benefits

and/or restoration death benefits created under this Section which are deemed to be marital property pursuant to ~~Va. Code Ann. Sections~~Section 20-89.1 *et seq.* of the Code of Virginia may be divided or transferred by the court by direct assignment to a spouse or former spouse pursuant to ~~Va. Code Ann. Section 20-107.3.~~107.3 of the Code of Virginia. Under no circumstances ~~may~~shall a payment under this ~~sub-section~~Subsection take place before the ~~Participant~~participant's benefit under the ~~Retirement~~ System is actually paid. (12-06-3.)

## ARTICLE 3. - Fairfax County Uniformed Retirement System.

## Division 1. - Generally.

Section 3-3-1. - ~~Definitions.~~ Fairfax County Uniformed Retirement System established.

Under the authority of Section 51.1-801 of the Code of Virginia, there is hereby established a retirement system for employees, to be known as the "Fairfax County Uniformed Retirement System," by and in which name it shall, pursuant to the provisions of this Article, transact all of its business. The Fairfax County Uniformed Retirement System is intended to satisfy the requirements of Sections 401(a) and 414(d) of the Internal Revenue Code for qualified governmental pension plans. (1961 Code, § 9-73; 11-74-9; 28-77-3; 51-13-3.)

Section 3-3-2. - Definitions.

~~For the purposes of this Article Unless provided otherwise in another Section, the following words and phrases shall have the meanings respectively ascribed to them by definitions shall apply to this Section~~ Article:

(a) Accrued sick leave credit shall mean:

- (1) For employees whose ~~county~~ County employment commenced by reporting for work before January 1, 2013 (members of Plans A, B, C, or D), ~~accrued sick leave credit shall mean~~ the credit allowed a member with more than five (5) years of service for purposes of determining retirement eligibility. Credit shall be allowed at the rate of one (1) month for every one-hundred-seventy-two (172) hours of accrued unused sick leave, and pro rata credit shall be allowed for each fraction thereof.
- (2) For employees whose ~~county~~ County employment commenced by reporting for work on or after January 1, 2013 (members of Plan E), ~~accrued sick leave credit shall mean~~ the credit allowed a member with more than five (5) years of service for purposes of determining retirement eligibility. Credit shall be allowed at the rate of one (1) month for every one-hundred-seventy-two (172) hours of accrued unused sick leave, and pro rata credit shall be allowed for each fraction thereof; however, for employees whose ~~county~~ County employment commenced by reporting to work on or after January 1, 2013, notwithstanding the amount of the employee's accrued sick leave balance, the maximum amount of accrued sick leave credit that may be used for determining retirement eligibility and for computing the member's retirement ~~benefits and~~ allowances and benefits shall be the employee's accrued sick leave balance or two-thousand-eighty (2,080) hours, whichever is less.
- (b) *Accumulated contributions* shall mean the sum of all amounts deducted or picked up from the compensation of a member and credited to his or her individual account in the members' contribution account, any amounts transferred from another retirement plan pursuant to Section 3-3-25.1, together with interest credited on such amounts and any other amounts he or she shall have contributed or transferred thereto as provided in Section 3-3-29(c).
- (c) *Actuarial equivalent* shall mean a benefit of equal value when computed ~~on~~ upon the basis of ~~the 1974 Group Annuity Mortality Tables for Females and an interest rate of five percent~~ such actuarial tables as are adopted by the Board.
- (d) *Average final compensation* shall mean the average annual creditable compensation of a member during the three (3) consecutive years (seventy-eight (78) consecutive pay periods) of creditable service in which such compensation was at its greatest amount, or during the entire period of his or her creditable service if less than three (3) years. In determining creditable compensation, premium payments such as overtime pay shall not be included.
  - (1) In determining average final compensation for members who retire on or after January 1, 1988, the member's accrued unused sick leave at the time of retirement may, at the option of the member, be substituted for an equivalent period of creditable service as if the member had



continued to work at his or her final salary during the period of his or her accrued unused sick leave; provided, ~~however,~~ that in determining the average final compensation for members who became members of ~~this~~the System on or after January 1, 2013 (~~i.e.,~~ members of Plan E), no more than two-thousand-eighty (2,080) hours of the member's accrued unused sick leave may be used for this purpose.

- (~~12~~) ~~Rule applicable to members ordered or called to active duty with the armed forces of the United States on or after August 2, 1990, with or without their consent, other than for training at the request of the member.~~ If a member ordered or called to active duty with the armed forces of the United States on or after August 2, 1990, with or without his or her consent, other than for training at the request of the member, is entitled to service credit as a result of such military service pursuant to Section 3-3-25(b) and he or she otherwise would have no creditable compensation attributable to some portion or all of such period of service, his or her average final compensation shall be calculated as if he or she had continued to receive the creditable compensation as defined in this Article and approved and established for his or her position by the County ~~Pay and~~ Compensation Plan, including ~~pick-up~~pick-up contributions, during the period of military service for which he or she is receiving service credit. A member shall be entitled to the benefit of the application of this rule for up to a cumulative total of four (4) years of military service commencing on or after August 2, 1990. The Board ~~is authorized and directed to~~shall make any and all necessary retroactive adjustments to members' allowances as a result of this rule.

- (3) Notwithstanding the foregoing, whenever the ~~Personnel~~Director, of the Department of Human Resources, at the request of the Board, the member, or the member's beneficiary, determines that the member's receipt of a merit increment was delayed as a result of either or both of the amendments to Section 4.3-2 of the Personnel Regulations, effective July 13, 1991, and July 11, 1992, and that the member would otherwise have been entitled to such merit increment under the Personnel Regulations, based upon the ~~Personnel~~Human Resources Director's review of the member's personnel and payroll records, the Board shall calculate the member's average final compensation as if the member had received the merit increment at the time he or she would have but for the aforesaid amendments to Section 4.3-2 of the Personnel Regulations. This ~~amendment~~rule shall apply to all applications for allowances and benefits filed with the Board ~~of Trustees~~ on or after July 13, 1991. The Board ~~of Trustees is hereby authorized and directed to~~shall make any necessary retroactive adjustments to allowances and benefits.

- (~~24~~) Periods of leave without pay under the federal Family and Medical Leave Act of 1993 (FMLA) shall be disregarded in determining periods of consecutive months or ~~payroll~~pay periods in calculating average final compensation.

- (e) *Beneficiary* shall mean any person entitled to receive benefits as provided by the System. The Board shall provide a member with a form on which to designate in writing one or more beneficiaries of the member's benefits upon the member's death. The Board shall maintain any such written designation on file. A designated beneficiary may be changed from time to time by written notice by the member filed with the Board.
- (f) *Board* shall mean the Board of Trustees of the System, as provided for in this Article.
- (g) *Creditable compensation* shall mean the full compensation, including ~~pick-up~~pick-up contributions, holiday hours worked, administrative emergency leave worked, shift differential paid and regularly scheduled hours paid, credited at the base rate of pay but excluding premium pay such as all overtime, including Fair Labor Standards Act (FLSA) overtime and excluding performance bonuses. Effective for plan years after December 31, 1988, compensation in excess of ~~\$200,000.00~~ (200,000.00, as indexed under Section 415(d) of the Internal Revenue Code), shall be disregarded. Notwithstanding the foregoing, effective for members whose ~~county~~County employment commenced by reporting for work on or after July 1, 1996, compensation in excess of the limit set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded. In determining the compensation of an employee under this ~~plan section~~definition, the rules of Section 415(c)(3) of the Internal Revenue Code shall apply. Effective for plan years on or after January 1, 2001 an employee's compensation shall include amounts not includible in gross income by reason of Section 132(f)(4) of the Internal Revenue Code.



- (h) *Creditable service* shall mean the sum of membership service credit, plus prior service credit, plus portability service credit purchased pursuant to Section 3-3-25.1, plus accrued sick leave credit.
- (i) *DROP shall mean the Deferred Retirement Option Program, as provided in Section 3-3-57.*
- (j) *Early retirement shall mean the retirement upon completion of twenty (20) years of service with an actuarial reduction of the normal retirement allowance accrued.*
- (k) *Employee* shall mean any person regularly employed within the Fire and Rescue Department, the Sheriff's Department, and the Department of Animal Control, with the exception of clerical personnel in these ~~Departments~~departments, or as a park police officer or ~~Helicopter Pilot~~helicopter pilot, rendering service to the County, and any person regularly employed within the Department of Public Safety Communications who transferred into ~~this~~the System pursuant to Section 3-2-19(e) or who ~~were~~was appointed to ~~positions~~a position in the classes identified in Section 3-3-20(a)(4) on or after July 1, 2005, whose compensation is fully or partially paid directly or indirectly by the County.
- (l) *Employer* shall mean an authority in the general County having the power to appoint an employee to office or employment paid, directly or indirectly, by the County and the Board of Trustees of the System.
- (~~k~~m) *Executive Director shall mean the Executive Director of the Fairfax County Retirement Administration Agency.*
- (n) *Internal Revenue Code shall mean the federal income tax statutes, as they may be amended or superseded from time to time in the future.*
- (p) *Medical Examining Board* shall mean the physician or physicians provided for by Section 3-3-~~10~~ who may act individually or collectively-10.
- (~~l~~q) *Member* shall mean any person included in the membership of the System as provided in Section 3-3-20.
- (~~m~~r) *Membership service credit* shall mean credit for service rendered while a member of ~~this~~the System, or as otherwise provided in Section 3-3-24.
- (~~a~~s) *Normal retirement date* shall mean either (1) the member's ~~fifty-fifth~~ (55th) birthday, provided, said member shall have completed six (6) years of creditable service as a uniformed member of the Fire and Rescue Department, Sheriff's Department, or Department of Animal Control, or as a park police officer, ~~Helicopter Pilot~~helicopter pilot, or ~~Sheriff~~sheriff, or (2) the date the member completes ~~twenty-five~~ (25) years of creditable service as a uniformed member of the Fire and Rescue Department, Sheriff's Department, or Department of Animal Control, or as a park police officer, ~~Helicopter Pilot~~helicopter pilot, or ~~Sheriff~~sheriff. The normal retirement date for members who are former park police officers who elected to remain in ~~this~~the System pursuant to Section 3-3-20(b)(2) shall be computed in the same manner. "Creditable service" for these members shall include service both as a park police officer and as a police officer.
- (~~e~~t) ~~Pickup~~Pick-up contributions shall mean a member's regular ~~member's contributions~~contribution which ~~are~~is picked up, through a salary reduction ~~in salary~~, by the County from ~~active members~~the member's compensation for service rendered on or after December 22, 1984.
- (~~p~~u) *Plan A* shall mean the option effective July 1, 1981, available to employees whose ~~county~~County employment commenced by reporting for work on or before March 31, 1997, providing for current members of Plan A to:
- (1) Contribute four percent (4%) of compensation up to the taxable wage base and five ~~and~~ three-fourths percent (5 3/4%) of compensation in excess of the taxable wage base; and
  - (2) Accrue normal retirement benefits as provided for in Section 3-3-33(a)(1)(A) and (B) or as provided for in Section 3-3-33(a)(2)(A). Further, cost-of-living adjustments shall not be applicable to the allowance until the member reaches age ~~55~~fifty-five (55) years, at which time the full benefits prescribed in Section 3-3-33 and Section 3-3-45 shall become payable.

- (~~qv~~) *Plan B* shall mean the provision effective July 1, 1981, allowing current members the option and requiring new members whose ~~county~~County employment commenced by reporting for work on or before March 31, 1997, to:
- (~~A1~~) Contribute seven ~~and~~ ~~eight~~ ~~one-hundredths~~ percent (7.08%) of compensation up to the taxable wage base and eight ~~and~~ ~~eighty-three-one-hundredths~~ percent (8.83%) of compensation in excess of the taxable wage base; and
  - (~~B2~~) Accrue normal retirement benefits as provided for in Section 3-3-33(a)(1)(A), (B), and (C) or as provided for in Section 3-3-33(a)(2)(A) and (B). Cost-of-living adjustments provided for in Section 3-3-45 ~~will~~shall be applied to this amount from the date of retirement. Additionally, ~~50~~fifty percent (50%) of the retirement allowance provided in Section 3-3-33(a)(1)(B) shall be payable from the date of retirement. Upon attainment of age ~~55~~fifty-five (55) years, benefits shall be based on the provisions of Section 3-3-33(a)(1)(A) and (B).
- (~~fw~~) *Plan C* shall mean the provision effective April 1, 1997, allowing then-existing members of Plan A who elect to transfer to Plan C prior to April 1, 1997, to:
- (~~A1~~) Contribute four percent (4%) of compensation; and
  - (~~B2~~) Accrue normal retirement benefits as provided for in Section 3-3-33(a)(1)(D) or as provided for in Section 3-3-33(a)(2)(C). Further, cost-of-living adjustments shall not be applicable to the allowance until the member reaches age ~~55~~fifty-five (55) years, at which time the full benefits prescribed in ~~Section~~Sections 3-3-33 and ~~Section~~3-3-45 shall become payable.
- (~~sx~~) *Plan D* shall mean the provision effective April 1, 1997, allowing then-existing members of Plan B, and requiring new members whose ~~county~~County employment commenced by reporting for work on or after April 1, 1997, but on or before December 31, 2012, to:
- (~~A1~~) Contribute seven ~~and~~ ~~eight~~ ~~one-hundredths~~ percent (7.08%) of compensation; and
  - (~~B2~~) Accrue normal retirement benefits as provided for in Section 3-3-33(a)(1)(D) or as provided for in Section 3-3-33(a)(2)(D). Cost-of-living adjustments provided for in Section 3-3-45 ~~will~~shall be applied to this amount from the date of retirement.
- (~~ty~~) *Plan E* shall mean the option effective beginning on January 1, 2013, requiring new members whose ~~county~~County employment commenced by reporting for work on or after January 1, 2013, to:
- (~~A1~~) Contribute seven ~~and~~ ~~eight~~ ~~one-hundredths~~ percent (7.08%) of compensation; and
  - (~~B2~~) Accrue normal retirement benefits as provided for in Section 3-3-33(a)(1)(D) or as provided for in Section 3-3-33(a)(2)(D). Cost-of-living adjustments provided for in Section 3-3-45 ~~will~~shall be applied to this amount from the date of retirement.
- (~~uz~~) Primary social security benefit shall mean the primary insurance amount to which the member is entitled, for old age or disability, as the case may be, pursuant to the federal Social Security Act as in effect at his or her date of retirement, under the provisions of this Chapter, except as otherwise specifically provided.
- (~~aa~~) *Prior service credit* shall mean credit for service rendered prior to the effective date of this Article [~~May 6, 1974~~], or as otherwise provided in Section 3-3-25.
- (~~vv~~)(~~bb~~) Qualifying employment shall mean employment that qualifies an employee for participation in the System, and defined specifically to mean regular employment by the Fire and Rescue Department, the Sheriff's Department, and the Department of Animal Control, with the exception of clerical employment in these departments, or as a park police officer or helicopter pilot rendering service to the County, whose compensation is fully or partially paid directly or indirectly by the County.
- (~~cc~~) *Retirement allowance* shall mean the retirement payments to which a member is entitled as provided in this Article.
- (~~ddd~~) *Salary* shall mean the compensation, including ~~pickup~~pick-up contributions, established for each position as approved in the County ~~Pay and~~ Compensation Plan.

(~~ee~~) Service shall mean service as an employee for which compensation is paid by the employer, but shall not include time spent on leave without pay.

(~~y~~)-ff) Social security shall mean the federal Social Security Act and its programs for old age, survivors and disability insurance and benefits, as applicable.

(gg) Social security breakpoint shall mean the average of the taxable wage base for the thirty-five (35) calendar years ending with the year in which the member attains ~~Social Security~~social security normal retirement age. In determining a member's ~~Social Security~~social security breakpoint during any particular plan year, it is assumed that the taxable wage in effect at the beginning of the plan year ~~will~~shall remain the same for all future years.

(~~zh~~) System shall mean the Fairfax County Uniformed Retirement System. When any part of this Article refers to multiple retirement systems, the Uniformed Retirement System shall be referred to as "this System," rather than "the System."

(ii) Taxable wage base shall mean the maximum amount of wages received during the calendar year on which ~~Social Security~~social security taxes are payable by the member and by the employer, as such amount is defined in Section 3121(a) of the Internal Revenue Code, ~~or as that Section may be amended or superseded from time to time in the future.~~ (~~aa~~) ~~System shall mean the Fairfax County Uniformed Retirement System.~~

~~(bb) Early retirement shall mean the retirement upon completion of 20 years' service with an actuarial reduction of the normal pension accrued. (cc) Qualifying employment shall mean employment that qualifies an employee for participation in this Retirement System, and defined specifically to mean regular employment by the Fire and Rescue Department, the Sheriff's Department, and the Department of Animal Control, with the exception of clerical employment in these Departments, or as a Park Police Officer or Helicopter Pilot rendering service to the County, whose compensation is fully or partially paid directly or indirectly by the County. (1961 Code, § 9-72; 11-74-9; 28-77-3; 20-81-3; 5-83-3; 22-83-3; 23-85-3; 36-88-3; 29-89-3; 27-90-3, § 3; 43-92-3; 15-93-3; 37-94-3; 21-96-3; 14-00-3; 10-01-3; 18-01-3; 8-03-3; 8-04-3; 36-10-3; 27-12-3.)~~

Section 3-3-~~2~~. ~~Fairfax County Uniformed Retirement System established.~~ 2.1. – Definitions elsewhere in County Code and in County Personnel Regulations.

~~Under the authority of Chapter 4, Article 1, Title 51-112 of the 1950 Virginia Code, as amended, there is hereby established a retirement system for employees, to be known as the "Fairfax County Uniformed Retirement System" by and in which name it shall, pursuant to the provisions of this Article, transact all of its business. The Fairfax County Uniformed Retirement System is intended to satisfy Internal Revenue Code §§ 401(a) and 414(d) requirements for qualified governmental pension plans.~~

~~(1961 Code, § 9-73; 11-74-9; 28-77-3; 51-13-3.)~~

Unless this Article provides otherwise, the definitions provided in Sections 1-1-2, 3-3-1, and 3-3-12 of the Code of the County of Fairfax, and Chapter 2 of the Fairfax County Personnel Regulations shall apply herein.

Section 3-3-3. - Social Security Breakpoint.

~~For the purposes of computing retirement benefits and allowances under this System, Social Security breakpoint shall mean the average of the taxable wage base for the thirty-five (35) calendar years ending with the year in which the member attains Social Security normal retirement age. In determining a member's Social Security breakpoint during any particular plan year, it is assumed that the taxable wage in effect at the beginning of the plan year will remain the same for all future years. Repealed by 16- -3.~~

Section 3-3-4. - Duties of appointing authorities.

The authority having the power to hire the services of a member shall keep such records and from time to time shall furnish such information as the Board may require in the discharge of its duties. Upon

employment of a member, the authority shall inform the member of his or her duties and obligations in connection with the ~~system~~System as a condition of employment. (1961 Code, § 9-74; 11-74-9.)

Section 3-3-5. ~~Acceptance of employment deemed consent~~ Consent to provisions of Article required for employment.

~~Upon~~By and upon acceptance of employment, every member shall be deemed to consent and agree to any deductions or employer ~~pickup~~pick-up of amounts from his or her compensation required by this Article and to all other provisions thereof. (1961 Code, § 9-75; 11-74-9; 5-85-3.)

Section 3-3-6. - Protection against fraud ~~and deceit~~.

~~Any~~In addition to any other provisions of law, any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of the ~~system~~System in any attempt to defraud the ~~system~~System shall be guilty of a misdemeanor and shall be punished accordingly. (1961 Code, § 9-76; 11-74-9.)

Section 3-3-7. ~~Assignment of benefits prohibited~~ Benefits unassignable; non-attachable.

The right of any member to a retirement allowance, the return of accumulated contributions or any other right accrued or accruing to any person under ~~the provisions of~~ this Article and the money created by this Article shall be unassignable and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws or any other process of law whatsoever except for administrative actions pursuant to ~~Chapter 13 (§ 63.1-249)~~Section 63.2-1900 et seq. ~~of Title 63.1~~ of the *Code of Virginia*, or any court process to enforce a child or child and spousal support obligation, and shall be unassignable except as specifically provided in this Article. However, retirement benefits and assets created under this Article which are deemed to be marital property pursuant to ~~Chapter 6 (§ Section 20-89.1 et seq.) of Title 20~~ of the *Code of Virginia*, may be divided or transferred by the court by direct assignment to a spouse or former spouse pursuant to Section 20-107.3 of the *Code of Virginia*, ~~Section 20-107.3~~, (1961 Code, § 9-77; 11-74-9; 3-80-3; 5-85-3; 13-92-3; 1-93-3.)

Section 3-3-8. ~~Error in records; corrections and adjustments~~ Errors resulting in over- or under-payment.

Should any change or error in the records result in any member or beneficiary receiving from the ~~system~~System more (overpayment) or less than he or she would have been entitled to receive had the records or computation been correct, the ~~board~~Board shall have the power to correct such error; and, as far as practicable, to adjust the payments in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. (1961 Code, § 9-78; 11-74-9.)

Section 3-3-9. - Amendment of Article.

The Board of Supervisors shall have the continuing right and power to amend or supplement this Article at any time, which right and power is hereby expressly reserved. But no amendment shall be made unless an actuarial report has been filed with the Board of Supervisors as to its effect upon the ~~system~~System and no amendment shall be adopted which ~~will~~shall reduce the then accrued benefits of ~~employees~~members or beneficiaries below the extent they are then covered by accumulated reserves, which reserves shall constitute a trust fund for the payment of such benefits. (1961 Code, § 9-79; 11-74-9.)

Section 3-3-10. - Medical Examining Board.

The Medical Examining Board shall consist of the ~~County~~ Director of the Health ~~Services~~Department (or his or her designee) and, in the discretion of the Board, one (1) or two (2) other physicians designated by the Board. The duties of the Medical Examining Board shall be to arrange for and pass upon all medical examinations required under this Article or requested by the Board and to investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement. The members of the Medical Examining Board, who may act individually or collectively, shall

report in writing to the Board their conclusions and recommendations upon all matters referred to it. (1961 Code, § 9-80; 11-74-9; 27-97-3.)

Section 3-3-10.1. - Post-employment physical examinations.

- (a) Any member or person eligible to participate in the ~~Uniformed Retirement~~ System who applies for service-connected disability retirement or severe service-connected disability retirement on or after July 1, 2004, shall disclose to the Board ~~of Trustees~~ any and all medical records and information, including, but not limited to any pre-employment or post-employment physical examination, any examination made relating to any claim under the Virginia Workers' Compensation Act and any and all other further tests or examinations required by the Board to assist it in its determination of whether the disability for which the member seeks retirement is service-connected or if it is the result of a preexisting condition.
- (b) Failure to disclose to the Board any medical record or information required hereunder or to undergo any further required tests or examinations shall preclude a member who does not disclose such medical records and information or such other further tests or examinations from receiving service-connected disability retirement as provided for in Section 3-3-36 and from receiving severe service-connected disability retirement as provided for in Section 3-3-37.2. (34-04-3.)

Division 2. - Board of Trustees.

Section 3-3-11. - Administration of ~~system~~System vested in Board of Trustees.

The general administration and the responsibility for the proper operation of the ~~system~~System and for making effective the provisions of this Article are hereby vested in the Board ~~of Trustees of the system~~. (1961 Code, § 9-81; 11-74-9.)

Section 3-3-12. - Membership; term of office.

- (a) The Board of Trustees of the ~~system~~System shall consist of ~~10 Trustees as follows: four Trustees~~the following members:
  - Four (4) persons appointed by the Board of Supervisors; ~~two Trustees~~
  - Two (2) persons elected by the uniformed employees of the Fire and Rescue Department and the employees of the Department of Public Safety Communications; ~~one Trustee~~
  - One (1) person elected by the uniformed employees of the Sheriff's Department and the Department of Animal Control and park police and ~~Helicopter Pilot~~helicopter pilot members of the ~~system; one Trustee~~System;
  - One (1) person elected by the retirees of the ~~system~~System; ~~the~~
  - Director of the Department of Finance, who shall be ~~treasurer~~the Treasurer of the Board, or his or her designee, sitting ex officio; and ~~the Director of Personnel or the personnel officer responsible for employee benefits for Fairfax County.~~
  - Director of the Department of Human Resources, or his or her designee, sitting ex officio.
- (b) With the exception of the Director of the Department of Finance, and ~~the Director of Personnel, or the personnel officer responsible for employee benefits for Fairfax County, who shall be ex officio members of the Board~~the Department of Human Resources, the terms of office of the ~~Trustees~~trustees shall be four (4) years.
- (c) The only persons eligible to be elected by the uniformed employees of the Fire and Rescue Department and the employees of the Department of Public Safety Communications as ~~Trustees~~trustees are uniformed employees of the Fire and Rescue Department and employees of the Department of Public Safety Communications. The only persons eligible to be elected as a ~~Trustee~~trustee by the uniformed employees of the Sheriff's Department and the Department of Animal Control and park police and ~~Helicopter Pilot~~helicopter pilot members of ~~this system~~the System are

uniformed employees of the Sheriff's Department and the Department of Animal Control and park police and ~~Helicopter Pilot~~helicopter pilot members of ~~this system~~the System. The offices of such trustees shall be vacated should such ~~members~~trustees separate from service prior to the completion of their term.

- (d) The only persons eligible to be elected as a ~~Trustee~~trustee by the retirees of the ~~system~~System are retirees of the ~~system~~System. (1961 Code, § 9-82; 11-74-9; 20-81-3; 13-92-3; 40-93-3; 36-10-3; 59-13-~~33~~.)

Section 3-3-13. - Vacancies in office.

If a vacancy occurs in the office of ~~the Trustee~~a trustee of the ~~system~~System, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled. (1961 Code, § 9-83; 11-74-9.)

Section 3-3-14. - Compensation of ~~Trustees~~trustees.

The ~~Trustees~~trustees of the ~~system~~System may receive compensation at the rate set by the Board of Supervisors. (1961 Code, § 9-84; 11-74-9.)

Section 3-3-15. - Accountable to the Board of Supervisors.

The Board of Trustees of the ~~system~~System shall be accountable to the Board of Supervisors. (1961 Code, § 9-85; 11-74-9.)

Section 3-3-16. - Functions of the Board.

- (a) Subject to the limitations of this Article, the Board shall, from time to time, establish rules and regulations for the administration of the ~~system~~System and for the transaction of its business, copies of which shall be made available to interested parties.
- (b) The Board may employ and pay out of the ~~system~~System funds for all services as shall be required.
- (c) The Board shall keep in convenient form such data as shall be necessary for an actuarial valuation of the ~~system~~System and for checking the experience of the ~~system~~System.
- (d) The Board shall keep minutes of all its proceedings, which shall be open to public inspection unless applicable law provides otherwise. ~~it~~
- (e) The Board shall submit to the Board of Supervisors annually an independent audit showing the fiscal transactions of the ~~system~~System for the preceding fiscal year, the amount of accumulated cash and securities of the ~~system~~System, and the last balance sheet indicating the financial condition of the ~~system~~System.
- (ef) At least once in each two (2) year period, beginning July 1, 1969, the Board shall cause an actuarial evaluation to be made of the ~~system~~System.
- (g) The Board shall review adverse decisions as provided by Section 3-3-50. (1961 Code, § 9-86; 11-74-9.)

Division 3. - Management of Funds.

Section 3-3-17. - Board trustee of funds; investment of same. <sup>a</sup>

- (a) The Board shall be the trustee of funds created by this Article and shall have full power to invest and re-invest such funds. Such investments and re-investments shall be conducted with bona fide discretion and in accordance with the laws of ~~this State~~the Commonwealth of Virginia as such laws apply to fiduciaries investing such funds. The Board may, upon the exercise of bona fide discretion, employ investment counsel, who shall be subject to the same limitations herein provided for the Board. Subject to such limitations~~;~~, the Board shall have full power to hold, purchase, sell, assign, transfer, or



otherwise dispose of any of the securities or investments in which any of the funds created herein have been invested, as well as the proceeds of such investments and any money belonging to such funds.

(b) No trustee shall be personally liable for losses suffered by the System on investments made under the authority of and in compliance with this Section. (1961 Code, § 9-87; 11-74-9.)

Footnotes:

~~—()~~

~~9. As to investment of the funds of the System, see Va. Code Ann. § 51-112.1.~~

Section 3-3-18. - Treasurer fiscal officer of the Board.

The Treasurer of the Board shall be the custodian of all of its funds and securities or evidences of such when in the custody of a fiduciary agent. He or she shall give bond, conditioned upon the faithful performance of his or her duties and the proper accounting of all funds and securities coming into his or her hands. He or she shall deposit all money in the name of the Board and disburse the same only on vouchers signed by such person as is designated for the purpose by the Board. (1961 Code, § 9-88; 11-74-9.)

Section 3-3-19. - Prohibited interest of member or employee of Board.

(a) The State and Local Government Conflict of Interests Act, Section 2.2-3100 et seq. of the Code of Virginia, shall apply to members and employees of the Board.

~~Except as otherwise provided in this Article, no member or employee of the Board shall have any direct or indirect interest in the gains or profits of any investment held by the system.~~ (b) No member or employee of the Board shall, directly or indirectly, for himself or herself or as an agent in any manner use the funds of the ~~system~~ System, except to make such current and necessary payments as are authorized by the Board. (1961 Code, § 9-89; 11-74-9.)

Division 4. - Membership in System.

Section 3-3-20. ~~Persons comprising membership~~ Membership composition.

(a) Membership shall be composed of the following:

(1) Present employees, as hereinafter identified, except those listed in Subsection (2)(B) of this Section:

(A) All persons who were employees on the effective date of this Article or who were on leave from service on such date; or

(B) Any employee, otherwise qualified, who has been a member of another Fairfax County retirement system, and who has withdrawn therefrom, provided he or she pays into this ~~system~~ System all contributions which would have been due from him or her had he or she been a member of this ~~system~~ System, plus interest at the rate or rates, as established by the Board, for each of the years for which membership service credit is sought.

(2) Future employees, as hereinafter identified, except those listed in Subparagraph (B) of this ~~Section~~ Subsection:

(A) All persons who hereafter shall become employees, persons receiving a normal or early service retirement allowance from this System, the Fairfax County Employees' Retirement System ~~(Article 2)~~, or Fairfax County Police Officers Retirement System ~~(Article 7)~~ eligible for membership only under the terms and conditions set forth in Section 3-3-43.

(B) ~~Exceptions.~~ Employees who are members of the Virginia Retirement System (VRS) and the Educational Employees Supplemental Retirement System ~~(Article 4)~~, the ~~of~~ Fairfax County (ERFC), the Employees' Retirement System ~~(Article 2)~~, or the ~~Fairfax County~~ Police Officers

Retirement System ~~(Article 7)~~, and future employees who are eligible to become members of those systems are not eligible for membership in this System; provided, ~~however,~~ that an employee who is a member of such a system shall be eligible for membership in this System if he or she elects in writing to withdraw from such system, pursuant to the rules and regulations of this System and of the system of which he or she was previously a member. If the withdrawal from the other system occurs due to being employed in a different position by the same appointing authority, the employee ~~will~~shall be required to purchase service credit under this System for service rendered while a member of such other system, pursuant to the rules of Section 3-3-24. If the withdrawal from the other system occurs due to being employed by a different appointing authority, the employee ~~will~~shall be permitted but not required to purchase service credit under this System for service rendered while a member of such other system, pursuant to the rules of Section 3-3-24. Elected officials, who elect in writing at the time of their employment not to become members, shall be exempted from this System.

- (3) The membership in this System of uniformed employees of the Department of Animal Control transferred from the Employees' Retirement System to this System pursuant to ~~the provisions of~~ Section 3-2-19(d) shall commence on October 1, 1985, or date of appointment, whichever is later. For purposes of this Article, such members shall be deemed to have been appointed on or after January 1, 1984, regardless of being granted any membership service credit pursuant to Section 3-3-24. Uniformed employees of the Department of Animal Control, including the Director, appointed on or after October 1, 1985, shall become members of this System upon appointment.
- (4) The membership in this System of certain employees of the Public Safety Communications Center transferred from the Employees' Retirement System to this System pursuant to ~~the provisions of~~ Section 3-2-19(e), shall commence on October 1, 2005, or date of appointment, which ever is later. Employees of the Public Safety Communications Center appointed on or after July 1, 2005, in the class specification Public Safety Communications Squad Supervisor, Public Safety Communications Assistant Squad Supervisor, Public Safety Communicator III, Public Safety Communicator II or Public Safety Communicator I, or any successor class specification(s) to these class specifications, shall become members of this System upon appointment.
- (b) ~~Provisions for transfer of park~~Police police members ~~of transferring to the Fairfax County Uniformed Police Officers Retirement System into the membership of the Fairfax County Police Officer's Retirement System (Police Retirement System):~~
  - (1) Members of this System who were park police and who were reclassified as police officers on January 22, 1983, shall, within ~~thirty (30)~~ thirty (30) days of the adoption of this Subsection [June 20, 1983], make an irrevocable election, in writing, whether to remain members of this System or to transfer to the Fairfax County Police Officers Retirement System.
  - (2) Members of this System who were park police and who were reclassified as police officers on January 22, 1983, who elect to remain as members of this System shall continue as members of this System.
  - (3) Members of this System who were park police and who were reclassified as police officers on January 22, 1983, who elect to transfer to the Police Officers Retirement System shall cease to be members of this System and shall be members of the Police Officers Retirement System as of January 22, 1983.
  - (4) Members who elect to transfer to the Police Officers Retirement System pursuant to ~~subsection~~Subsection (b)(3) of this Section shall make a further election among the following options at the time of their election under Subsection (b)(1) of this Section:
    - (A) Withdraw the total of his or her accumulated member contributions (with interest) as of January 22, 1983, which shall be reduced by the amount of any retirement allowances previously received by him or her under ~~any of the provisions of~~ this Article. Any member contributions to this System after January 22, 1983, shall be transferred to the transferee's member account in the Police Officers Retirement System. Said refund shall be paid to the



- member not later than ninety (90) days from the date of receipt of the member's election by the Board; or
- (B) If the member has five (5) or more years of creditable service in this System on January 22, 1983, the member may leave his or her accumulated contributions as of January 22, 1983, in ~~the fund~~ this System and receive a deferred ~~annuity~~ vested benefit commencing on the first of the month coinciding with or following the date the member attains age ~~55~~ fifty-five (55) years, or in an actuarially reduced amount payable at the optional early retirement age, in accordance with applicable provisions of this Article; and any member contribution made to this System after January 22, 1983, shall be transferred to the transferred member's account in the Police Officers Retirement System; or
  - (C) The member may transfer his or her accumulated contributions to the Police Officers Retirement System to obtain prior service credit in that ~~System~~ system pursuant to Section 3-7-20(b). In this case, the Board shall transfer the member's accumulated contributions (plus interest) as well as that portion of the retirement allowance account representing employer contributions to this System attributable to the member's service in this System to the Police Officers Retirement System.
- (5) Members who are required by Subsection (b)(1) of this Section to make an election whether to transfer to the Police Officers Retirement System who fail to do so within the thirty (30-) day period provided therein shall be deemed to have elected to continue in this System pursuant to Subsection (b)(1) of this Section.
  - (6) ~~The participation~~ Participation in ~~the~~ this System of former members who return to qualifying employment shall be determined in accordance with the following terms and conditions:
    - (A) Former members who have not withdrawn their accumulated contributions from ~~the~~ this System as provided in Section 3-3-39 shall return to membership in the plan to which they were contributing at the time their former employment ceased.
    - (B) Former members who withdrew their accumulated contributions from ~~the~~ this System as provided in Section 3-3-39 subsequent to the cessation of their former employment shall become members of Plan D upon their return to qualifying employment. A former member may purchase membership service credit for the period of his or her prior employment, provided that he or she pays into this System all contributions that would have been due from him or her had he or she been a member of this System during the period of his or her prior employment, plus interest on such contributions at the rate or rates established by the Board, for each of the years for which membership service credit is sought. Any election to purchase membership service credit for periods of prior employment under this ~~subsection~~ Subsection must be made within one (1) year after the former member returns to qualifying employment.
  - (c) Members of ~~this~~ the System who were deputy sheriffs and who as deputy sheriffs had been performing nursing and/or paramedical duties in the ~~Office of the Sheriff's~~ Department and who when reassigned to civilian positions in the ~~Office of the Sheriff's~~ Department allocated to one of the classes in the Correctional Health Nurse class series, shall, ~~notwithstanding~~ notwithstanding any other provision in this Chapter to the contrary, remain as members of ~~this~~ the System so long as they remain in such positions and for so long as they remain so continuously employed in a position allocated to such classes in the ~~Office of the Sheriff's~~ Department or in other positions covered by this Article.
  - (d) Notwithstanding any other provision of this Chapter or Article to the contrary, an active member of this System who has more than five (5) years of creditable service in this System and who is appointed to serve as a ~~deputy county executive~~ Deputy County Executive shall remain a member of this System, and shall not become a member of the Fairfax County Employees' Retirement System as a result of such appointment. Any such member shall remain a member of this System for so long as he or she is so employed or subsequently resumes working in a position that is covered under this System. (1961 Code, § 9-90; 11-74-9; 35-81-3; 22-83-3; 23-85-3; 36-86-3; 45-93-3, 10-01-3; 32-02-3; 23-05-3; 27-12-3.)

Section 3-3-21. - Cessation of membership.

The membership of any person in the ~~system~~System shall cease :

- (~~1a~~) ~~if~~ Upon he ~~or she~~ ceases to be an employee for a period of five (5) years;<sup>7.4</sup> or  
(~~2b~~) ~~upon~~ Upon separation and withdrawal of his ~~or her~~ accumulated contributions;<sup>7.4</sup> or  
(~~3c~~) ~~upon~~ Upon death. (1961 Code, § 9-91; 11-74-9; 20-81-~~33~~.)

Division 5. - Service Credit.

Section 3-3-22. - Statement to be filed with Board.

Under such rules and regulations as are adopted by the Board, each member or someone on his ~~or her~~ behalf shall file with the Board in such form as the Board may prescribe, a statement of the facts pertaining to his ~~or her~~ status as a member, which shall include a statement of all service rendered as an employee, and such other information as the Board may require. Until such statement is filed, no member or his ~~or her~~ beneficiary shall be eligible to receive any benefits under this Article. (1961 Code, § 9-92; 11-74-9.)

Section 3-3-23. - Year of service.

The Board shall determine by appropriate rules and regulations how much service in any year is the equivalent of a year of service, but in no case shall it allow credit for more than one (1) year of service for all service rendered in any period of twelve (12) consecutive months. (1961 Code, § 9-93; 11-74-9.)

Section 3-3-24. - Membership service credit.

- (a) Each member shall receive membership service credit for periods for which he or she received compensation and was a member of ~~this~~the System or after he ~~or she~~ last became a member in the event of a break in his ~~or her~~ membership,<sup>7.4</sup> provided that any former member of ~~this~~the System who ceased his or her ~~county~~County employment and withdrew his or her accumulated member contributions from the System may purchase membership service credit by paying into the System all accumulated contributions which were collected from him or her during his or her prior period or periods of membership, plus interest at the rate or rates established by the Board, for the entirety of any period of prior service for which membership service credit is sought ~~or for the period he is on service-connected disability retirement~~; a member may not purchase credit for only a portion of any prior period of service, but may only purchase credit for an entire prior period of service. In the event that a member of Plans A, B, C, or D, who ceased his or her ~~county~~County employment and withdrew his or her accumulated member contributions from the System seeks, on or after January 1, 2013, to purchase credit for periods during which he or she received compensation as a member of ~~this~~the System, he or she may only become a member of, and purchase membership service credit in, Plan E, by paying into the System all accumulated contributions which would have been collected from him or her during his or her prior period or periods of membership, plus interest at the rate or rates established by the Board, for the entirety of any period of prior service for which membership service credit is sought; however, notwithstanding the foregoing, a member of any of the five Plans (A, B, C, D or E) that are part of the ~~Uniformed Retirement~~ System who ceased his or her ~~county~~County employment, but who left his or her accumulated member contributions in the System, ~~must~~shall, upon his or her return to ~~county~~County employment, rejoin the Plan to which he or she formerly belonged. Such member may satisfy some or all of the amount due from him or her for the purchase of such service through a rollover from an individual retirement account if ~~and only if~~ the entire amount in that account is attributable to a rollover from the System. Such member may also satisfy some or all of the amount due from him or her for the purchase of such service through a direct trustee-to-trustee transfer from an eligible deferred compensation plan described in ~~section~~Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in ~~section~~Section 457(e)(1)(A) ~~of the Internal Revenue Code~~, or through a direct trustee-to-trustee transfer from an annuity contract described in ~~section~~Section 403(b) of the Internal Revenue Code.

- (1) Members who are former park police officers who elected to remain in ~~this~~the System under ~~the provisions of~~ Section 3-3-20(b)(2) shall receive membership service credit for service rendered as a park police officer and for their service as a police officer, including time served as a police officer prior to their election pursuant to Section 3-3-20(b)(2).
  - (2) Uniformed employees of the Department of Animal Control who transferred into this System pursuant to ~~the provisions of~~ Section 3-2-19(d) may purchase membership service credit in this System for service as a uniformed employee of the Department of Animal Control rendered prior to October 1, 1985, by making an election in writing pursuant to ~~Subsection~~Section 3-2-19(d)(3) and paying to the Board the difference between the employee contributions that would have been required under this System plus interest, and their employee contribution plus interest to the Fairfax County Employees' Retirement System for the period for which membership service credit is sought. The Board is authorized to enter into agreements with such members for the payment of the sum in installments, at the same interest rate, applied to the member's contribution account, so long as the entire sum due, plus interest, is paid within one (1) year of the adoption of Section 3-2-19(d) [December 16, 1985].
  - (3) With respect to employees of the Public Safety Communications Center who transferred into this System pursuant to ~~the provisions of~~ Section 3-2-19(e) and who purchase membership service credit in this System pursuant to ~~Subsection~~Section 3-2-19(e)(3) and (5) by paying to the Board the difference between the employee contributions that would have been required under this System plus interest, and their employee contribution plus interest to the ~~Fairfax County~~ Employees' Retirement System, the Board is authorized to enter into agreements with such members for the payment of the sum in installments, at the same interest rate, to be applied to the member's contribution account, so long as the entire sum due, plus interest, is paid within three (3) years of October 1, 2005.
  - (4) Under such rules and regulations as are adopted by the Board, any employee who has been a member of the Virginia Retirement System (VRS) and the Educational Employees Supplemental Retirement System (~~Article 4~~), ~~the of~~ Fairfax County (ERFC), ~~the~~ Employees' Retirement System (~~Article 2~~), or the Fairfax County Police Officers Retirement System (~~Article 7~~), and who withdraws therefrom may purchase service credit for service rendered while a member of such other system by paying into this System all contributions that would have been due from him or her had he or she been a member of this System, plus interest at the rate or rates, as established by the Board, for each of the years for which membership service credit is sought. (A member may purchase membership service credit for prior service while a member of ~~the Virginia Retirement System~~VRS only for service due to employment by the Fairfax County Public Schools (FCPS).)
  - (5) The amount due from a member for such purchase of service credit ~~must~~shall be satisfied, to the extent possible, (a) by directing the trustees of the system from which he or she is withdrawing to transfer his or her accumulated member contributions in such system directly to this System, without distribution to such employee, if such transfers are available under such system, or (b) through (i) a rollover from the system from which he or she is withdrawing (if the member would be eligible for a refund from such system), (ii) a rollover from an individual retirement account in which all contributions were derived from a rollover from a system, (iii) a direct trustee-to-trustee transfer from an annuity described in Section 403(b) of the Internal Revenue Code, or (iv) a direct trustee-to-trustee transfer from an eligible deferred compensation plan described in ~~section~~Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in ~~section~~Section 457(e)(1)(A) ~~of the Internal Revenue Code~~. To the extent that a rollover or direct transfer permitted under § 3-3-24this Subsection is insufficient to purchase the necessary service credit, other arrangements permitted by the rules and regulations adopted by the Board shall be made for purchasing such service credit.
- (b) Members in service shall also receive membership service credit for periods of service-connected disability retirement from the System.

(c) A member shall also receive membership service credit for any period during which the member is taking leave without pay from the County service and is receiving compensation from the County for temporary total or temporary partial disability under the Virginia Workers' Compensation Act.

(d) ~~Each member shall receive membership service credit for military leave, provided he or she returns to full employment within ninety (90) days of discharge and such discharge is other than dishonorable.~~ (1961 Code, § 9-94; 11-74-9; 22-83-3; 23-85-3; 45-93-3; 36-94-3; 22-96-3; 10-01-3; 8-03-3; 23-05-3; 27-12-3.)

Section 3-3-25. - ~~Credit for prior~~Prior service credit.

~~(a)~~ The Board shall determine, as soon as practicable after the filing of statements of service, the service credit that the member is entitled to receive creditable for prior service ~~for~~. Credit for prior service need not have been continuous provided no break in service exceeded five (5) years. When an employee again becomes a member after his or her prior membership has ceased, he or she shall enter the systemSystem as an employee not entitled to prior service credit. Members who have had a break in service shall receive full credit for all past County service; provided ~~however~~, that no credit shall be given for a period of employment prior to a break in service in excess of five (5) years. ~~(b) Each member shall receive membership service credit for military leave, provided he or she returns to full employment within 90 days of discharge and such discharge is other than dishonorable.~~ (1961 Code, § 9-95; 11-74-9; 45-93-3; 30-09-3.)

Section 3-3-25.1. - Portability ~~of~~ service credit.

(Aa) Definitions. ~~For the purpose of this section, these terms shall be defined as follows:~~

- (1) "Accepting plan" shall mean the retirement plan or system which is receiving membership assets from another defined benefit retirement plan or system in order to permit a current member to purchase portability service credit in the accepting plan through the use of his or her membership contributions in the transferring plan.
- (2) "Portability service credit" shall mean service credit purchased in an accepting plan by the transfer of membership assets from the transferring plan.
- (3) "Transferring plan" shall mean the retirement plan or system which is transferring membership assets to an accepting plan to enable a former employee of the transferring plan to purchase service in the accepting plan through the use of his or her membership contributions in the transferring plan.

(Bb) The Board of Supervisors ~~of Fairfax County~~ may enter into agreements with the Virginia Retirement System (VRS) or with any other political subdivision of the Commonwealth of Virginia, provided that the retirement system of any other political subdivision of the Commonwealth of Virginia is a defined benefit plan or eligible deferred compensation plan described in ~~section~~Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in ~~section~~Section 457(e)(1)(A) ~~of the Internal Revenue Code~~, to permit any vested member of any such plan to purchase portability credit in the ~~Fairfax County Uniformed Retirement~~this System.

(Cc) The purchase of portability service credit in the ~~Fairfax County Uniformed Retirement~~ System pursuant to this ~~section~~Section may only be made within eighteen (18) months of the date when an employee commences employment in a position covered by the ~~Fairfax County Uniformed Retirement~~ System, or within eighteen (18) months of ~~the date of the enactment of this ordinance~~March 23, 2003, for County employees who are members of the ~~Fairfax County Uniformed Retirement~~ System on ~~the date of the enactment of this ordinance~~March 23, 2003.

(Dd) In order to purchase portability service credit in the ~~Fairfax County Uniformed Retirement~~ System, the member ~~must~~shall be a vested member of the transferring plan and the transferring plan ~~must~~shall be holding member contributions that are subject to transfer. A member desiring to purchase portability service credit shall make written application for the purchase of such credit to the ~~Fairfax County Uniformed Retirement~~ System. The ~~Fairfax County Uniformed Retirement~~ System ~~will~~shall determine from the transferring plan the amount of the member's assets that would be subject to transfer to the

~~Fairfax County Uniformed Retirement~~ System. Based upon the amount subject to transfer, the Board of Trustees of the ~~Fairfax County Uniformed Retirement System~~ will shall determine the amount of portability service credit that would be actuarially equivalent to the amount of the assets to be transferred to the ~~Fairfax County Uniformed Retirement~~ System; this amount will shall represent the maximum amount of portability service credit that can be purchased. The Board of Trustees will shall communicate the amount of portability service credit that can be purchased to the member in writing; however, in no event will shall the amount of portability service credit that can be purchased exceed the duration of the member's employment in a position that was covered by the transferring plan. The member shall have thirty (30) days from the date of the letter advising him or her of the amount of ~~portable~~ portability service credit that can be purchased to determine whether to proceed with the purchase or to withdraw his or her application for the purchase of portability service credit.

- (~~Ee~~) In the event that the assets transferred are not sufficient to purchase portability service credit in the ~~Fairfax County Uniformed Retirement~~ System equivalent to five (5) years of service, the member will shall not become vested in the ~~Fairfax County Uniformed Retirement~~ System until his or her creditable service equals five (5) years.
- (~~Ff~~) The purchase of portability service credit in the Virginia Retirement System (VRS) or the retirement system of any political subdivision of the Commonwealth of Virginia that is covered by this Section shall be accomplished upon the transfer of assets from the transferring plan to the ~~Fairfax County Uniformed Retirement~~ this System. Upon the completion of such transfer, the member shall lose all rights to any ~~benefits and~~ allowances and benefits from the transferring plan, and will shall only be entitled to receive ~~benefits and~~ allowances from the Fairfax County Uniformed Retirement and benefits from this System.
- (~~Gg~~) When a vested member of ~~the Fairfax County Uniformed Retirement~~ this System leaves his or her covered employment and enters a position covered by the Virginia Retirement System (VRS) or by a defined benefit retirement plan of a political subdivision of the Commonwealth of Virginia with which the Board of Supervisors has entered into a portability agreement, the former member of ~~the Uniformed Retirement~~ this System may transfer an amount equal to the greater of (i) his or her accumulated member contributions with interest thereon, or (ii) an amount representing the present value of his or her accrued benefits with ~~the Uniformed Retirement~~ this System. In order to accomplish the transfer of assets from ~~the Uniformed Retirement~~ this System to an accepting plan, the member must make application in writing to ~~the Uniformed Retirement~~ this System. Upon the transfer of membership assets from ~~the Uniformed Retirement System~~ this to the accepting plan, the member shall lose all rights to any ~~benefits or~~ allowances or benefits from ~~the Uniformed Retirement~~ this System based upon the service giving rise to the assets transferred to the accepting plan by this System. Should such a person resume service in a position covered by this System in the future, he or she may purchase service credit for such prior service or purchase portability service credit, if eligible to do so, in accordance with the provisions of this Article at the time he or she again becomes a member of this System. (18-01-3; 8-03-3.)

#### Division 6. - Contributions.

##### Section 3-3-26. - Member contributions.

- (a) Each member shall contribute for each pay period for which he or she received compensation the amounts prescribed in this Section. Subsequent to December 22, 1984, ~~Fairfax~~ the County shall pick up all employee contributions required herein, for all compensation earned on or after December 22, 1984. The Board of Supervisors may, from time to time, revise the rates of member contributions.
- (b) All members of Plan A, who, before April 1, 1997, do not elect in writing to accept the provisions set forth in Subsection (d) of this ~~Section 3-3-26(d) below~~ and Section 3-3-33(a)(2)(C) will shall be considered as participants in Plan A. Contributions shall be made equal to four percent (4%) of such member's creditable compensation per pay period until his or her creditable compensation during the calendar year exceeds the taxable wage base. When such member's annual creditable compensation during the calendar year exceeds the taxable wage base, contributions will shall be made equal to five and three-quarters percent (~~5%~~ 3/4%) of said member's creditable compensation per pay period.



- (c) All members of Plan B, who before April 1, 1997, do not elect in writing to accept the provisions set forth in Subsection (e) of this Section ~~3-3-26(e)~~ and Section 3-3-33(a)(2)(D), ~~will~~ shall be considered participants in Plan B. Contributions shall be made equal to seven ~~and~~ eight ~~one-hundredths~~ percent (7.08%) of such member's creditable compensation per pay period until his ~~or her~~ creditable compensation during the calendar year exceeds the taxable wage base. When such member's annual creditable compensation during the calendar year exceeds the taxable wage base, contributions ~~will~~ shall be made equal to eight ~~and~~ eighty-three ~~one-hundredths~~ percent (8.83%) of said member's creditable compensation per pay period.
- (d) All members of Plan A, who, before April 1, 1997, elect in writing to accept the provisions of this Section and Section 3-3-33(a)(2)(C), ~~will~~ shall be considered participants in Plan C. Contributions shall be made equal to four percent (4%) of the member's creditable compensation per pay period.
- (e) All members of Plan B, who, before April 1, 1997, elect in writing to accept the provisions of this Section and Section 3-3-33(a)(2)(D), and all new members who begin employment that qualifies them for participation in the ~~Uniformed Retirement~~ System on or after April 1, 1997, ~~will~~ shall be considered participants in Plan D. Contributions shall be made equal to seven ~~and~~ eight ~~one-hundredths~~ percent (7.08%) of the member's creditable compensation per pay period.
- (f) Notwithstanding any other provision of this Section, no pick ~~up~~ shall be made from any member's compensation if the employer's contribution required hereunder is in default.
- (g) The Board may modify the method of collecting the pick-up contributions of members so that the employers, departments, institutions, and agencies required to remit to the Treasurer of the Board may retain the amounts picked up by them with respect to members' salaries and have a corresponding amount deducted from County funds otherwise payable to them.
- (h) All contributions required to be made under ~~paragraphs~~ Subsections (b), (c), (d) and (e) ~~above of this~~ Section with respect to current services rendered by an active member on or after December 22, 1984, shall be picked up by the County and shall be treated as the employer's contribution in determining tax treatment under Section 414(h)(2) of the ~~United States~~ Internal Revenue Code ~~for federal tax purposes, pursuant to 26 USC, § 414(h)(2).~~ For all other purposes, under this Chapter and otherwise, such ~~pick up~~ pick-up contributions shall be treated as contributions made by a member in the same manner and to the same extent as contributions made by a member prior to December 22, 1984. All picked ~~up~~ amounts shall be included in compensation for the purpose of calculating benefits under Division 8. The County ~~of Fairfax~~ shall pay such picked ~~up~~ amounts from the same source of funds which is used in paying earnings to the employee.
- (i) With the exception of the transfers between retirement plans specifically allowed as set forth above, no transfers between any of the Plans of the ~~Uniformed Retirement~~ System shall be permitted. (1961 Code, § 9-96; 11-74-9; 20-81-3; 34-81; 5-85-3; 48-96-3.)

Section 3-3-27. - Employer contributions.

- (a) Each employer shall contribute at an annual rate to be fixed by the Board of Supervisors.
- (b) The aggregate present value of future employer contributions payable into the retirement allowance account shall be sufficient, when combined with the amount then held in the members' contribution account and the retirement allowance account together with the present value of future employee contributions, to provide the estimated prospective benefits payable. The annual employer contribution rate shall be fixed as equal to the employer normal cost plus an expense rate, as long as the System's funding ratio (actuarial value of assets divided by actuarial accrued liability) remains within a corridor, the lower measurement of which is described below and the upper measurement of which is one-hundred-twenty percent (120%). The employer normal cost and System actuarial accrued liability are to be measured using the entry age normal funding method.
  - To the extent that the System's funding ratio exceeds one-hundred-twenty percent (120%), a credit shall be established equal to the amount of assets in excess of one-hundred-twenty percent (120%) of the actuarial accrued liability.

- To the extent that the System's funding ratio is lower than the lower ~~measurement~~measure of the corridor, a charge shall be established equal to the difference between ~~that~~the lower ~~measurement~~measure plus the actuarial accrued liability and the assets.

The employer contribution shall be adjusted by a fifteen (15) year amortization of ~~this~~the credit or charge described in this Subsection, to be paid until the funding ratio re-enters the corridor at which time it ~~will~~shall cease.

Effective with the fiscal year 2016 County contribution rate, the lower ~~measurement~~measure of the corridor ~~will~~shall be established at ninety-five percent (95%). The ninety-five percent (95%) threshold ~~will~~shall be increased until it reaches one-hundred percent (100%), no later than by the year 2020. Once the lower measurement of the corridor reaches one-hundred percent (100%), the fifteen (15) year amortization described above shall be over a fixed fifteen (15) years with additional fifteen (15) year amortization layers created annually. Once the System's funding ratio reaches one-hundred percent (100%), such amortizations shall cease.

In the event of an ordinance change that affects benefits, the employer contribution rate shall be changed effective with the July 1 coincident with or next following the date of adoption of the ordinance change. The employer normal cost component shall be adjusted to the level required by the ordinance change and there ~~will~~shall be an additional component to the employer cost equal to the increase in actuarial accrued liability. Any additional actuarial accrued liability which does not reduce the funding level below one-hundred-twenty percent (120%) shall be excluded from this component. (1961 Code, § 9-97; 11-74-9; 23-85-3; 28-89-3; 48-96-3; 10-01-3; 16-02-3; 28-15-3, § 22.)

Division 7. - Assets of System.

Section 3-3-28. - Assets to be credited to one of two accounts.

All of the assets of the ~~system~~System shall be credited, according to the purpose for which they are held, to one (1) of two (2) accounts, namely, "~~the members' contribution account,~~" and "~~the retirement allowance account.~~" (1961 Code, § 9-98; 11-74-9.)

Section 3-3-29. - Members' contribution account.

- The members' contribution account shall be the account to which all members' contributions, ~~pickup~~pick-up contributions and interest allowances as provided in this Article shall be credited. From this account shall be paid the accumulated contributions of a member required to be returned to him or her upon withdrawal or paid in the event of his or her death before retirement.
- Each member's contribution and ~~pickup~~pick-up contributions provided for in Sections 3-3-26 and 3-3-27 shall be credited to the individual account of ~~such~~that member.
- Each individual account of the members' contribution account shall be credited annually with interest at a rate of not less than two percent (2%) per annum on the accumulated contributions of the member; provided, ~~however,~~ that interest shall accrue on any such contribution beginning at the end of the calendar year in which each such contribution was made, and further provided that interest shall not be accredited or accumulated to the individual accounts of members who have ceased to be employees for a period of more than five (5) years.
- Upon the retirement of a member, his or her accumulated contributions shall be transferred from the members' contribution account to the retirement allowance account. (1961 Code, § 9-99; 11-74-9; 5-85-3.)

Section 3-3-30. - Retirement allowance account.

- The retirement allowance account shall be the account in which shall be accumulated all employer contributions, amounts transferred from the members' contribution account, and to which all income from the invested assets of the ~~system~~System after all expenses for required services shall be

credited. This account shall pay retirement allowances, other benefits payable after a member's retirement, and necessary expenses of the ~~system~~ System.

- (b) The amount of interest allowances provided for in Section 3-3-29 shall be transferred each year from the retirement allowance account to the members' contribution account. (1961 Code, § 9-100; 11-74-9.)

#### Section 3-3-31. - Deposits.

For the purpose of meeting disbursements for retirement allowances and other payments, there may be kept available cash, not exceeding ten percent (10%) of the total amount in the accounts of the ~~system~~ System, on deposit in one (1) or more banks or trust companies that are approved as depositories for County funds. (1961 Code, § 9-101; 11-74-9.)

#### Division 8. - Benefits ~~and Conditions Thereof~~.

#### Section 3-3-32. - Service retirement.

- (a) Normal service retirement. Any member in service who has attained the age of fifty-five (55) years and has completed six (6) years of creditable service, or has completed twenty-five (25) years of creditable service may retire at his or her normal retirement date or thereafter upon written notice to the Board made by the member, or his or her duly appointed agent, stating the time the retirement is to become effective. However, such effective date shall be subsequent to his or her last day of service, but not more than ninety (90) days subsequent to the filing of such notice.
- (b) Early service retirement. Any member in service who has completed twenty (20) years of creditable service may retire pursuant to the procedures set forth in Subsection (a) of this Section.
- (c) Compulsory retirement. Repealed; provided ~~however~~, any member in service who previously had reached compulsory retirement age but who had continued in service pursuant to the exemptions previously provided by ~~the subsection~~ this Subsection may continue in service without regard to the limitations set forth in this ~~subsection~~ Subsection. (1961 Code, § 9-102, 11-74-9; 28-77-3; 20-81-3; 5-83-3; 22-83-3; 14-87-3.)

#### Section 3-3-33. - Service retirement allowance and other benefits.

- (a) Normal service retirement. Upon service retirement after July 1, 1988, a member shall receive an annual retirement allowance, payable monthly as provided below:
  - (1) Effective the first of any month following the member's attainment of age fifty-five (55) years the annual retirement allowance payable for life shall consist of:
    - (A) For members of Plans A and B, an amount equal to two percent (2%) of the average final compensation, multiplied by the number of years of creditable service.
    - (B) In addition to the amount of retirement allowance provided in ~~Subsection~~ Subparagraph (A) of this ~~Section~~ Subsection, members of Plans A and B shall receive an additional amount payable monthly, equal to the primary ~~Social Security~~ social security benefit to which such member would be entitled under the provisions of the Social Security Act in effect on the date of the member's retirement if such member were then sixty-five (65) years of age. Further, such additional retirement allowance shall be reduced by the amount of any ~~Social Security~~ social security benefits such member may become eligible to receive, at the earliest date of such eligibility. For purposes of this reduction the amount of ~~Social Security~~ social security benefits of a member shall be the amount he or she would have been eligible to receive, without regard to any disqualification resulting from the earned income of the member. The ~~Social Security~~ social security benefits, for all employees whose ~~county~~ County employment commenced by reporting for work after July 1, 1976, ~~will~~ shall be determined on a pro rata basis as ratio of the number of years of creditable service in the County



- (numerator) and twenty-five (25) years (~~the~~ denominator). This number is never larger than one.
- (C) For the ~~participants in members of~~ Plan B, the amount prescribed in ~~Subsection~~Subparagraph (A) of this ~~Section~~Subsection shall include cost-of-living adjustments provided for under Section 3-3-45 during the period between the member's retirement and his or her attainment of age ~~55-fifty-five (55) years~~.
  - (D) For members of Plans C, D and E, an amount equal to two and five ~~and five~~ tenths percent (2.5%) of the member's average final compensation multiplied by the number of years of creditable service.
  - (E) For ~~participants in members of~~ Plans D and E, the amount prescribed in ~~Subsection~~Subparagraph (D) of this ~~Section~~Subsection shall include cost-of-living adjustments provided for under Section 3-3-45.
- (2) For members who retire before attaining the age of ~~55-fifty-five (55) years~~, the annual retirement allowance, payable during the period between retirement and the first of the month following such member's fifty-fifth (55th) birthday, shall be determined as follows:
- (A) Members of Plan A ~~participants~~ shall receive the amount provided for in Subsection (a)(1)(A) of this Section. Such allowances shall not be subject to cost-of-living adjustments provided for under Section 3-3-45 until the first of the month following the member's fifty-fifth (55th) birthday. Further, the additional allowance prescribed in ~~Section 3-3-33~~Subsection (a)(1)(B) ~~above of this Section~~ shall not be included.
  - (B) After undergoing the additional deductions through December 31, 1981, members of Plan B ~~Participants~~ shall receive the amount provided for in Subsection (a)(1)(A) of this Section subject to cost-of-living adjustments under Section 3-3-45 plus ~~50~~fifty percent (50%) of the additional allowance provided for under Subsection (a)(1)(B) of this Section.
  - (C) Members of Plan C ~~participants~~ shall receive the amount provided for in Subsection (a)(1)(D) of this Section. Such allowances shall not be subject to cost-of-living adjustments provided for under Section 3-3-45 until the first of the month following the member's fifty-fifth (55th) birthday.
  - (D) ~~Participants in~~Members of Plans D and E shall receive the amount provided for in Subsection (a)(1)(D) of this Section subject to cost-of-living adjustments under Section 3-3-45 as provided in Subsection (a)(1)(E) of this Section.
- (3) In addition to the allowances provided in Subsections (a)(1) and (a)(2) of this Section, for ~~members of participants in~~ Plans A, B, C, D or E retiring after March 18, 2002, the allowances in Subparagraphs (A) and (B) below, referred to as the ~~Pre-Social Security Benefit~~pre-social security benefit, shall be payable until the first month after the member attains the age of eligibility for an unreduced social security retirement benefit. The ~~Pre-Social Security Benefit~~pre-social security benefit shall not be subject to cost of ~~of~~ living adjustments provided for under Section 3-3-45.
- (A) For ~~the participants in Plan~~members of Plans A and ~~Plan~~ B, an additional amount equal to two-tenths of one percent (0.2%) of average final compensation times years of service.
  - (B) For ~~the participants in members of~~ Plan C, D, and E, an additional amount equal to three-tenths of one percent (0.3%) of average final compensation times years of service.
  - (C) The ~~Pre-Social Security Benefit~~pre-social security benefit provided herein shall not be credited to the DROP accounts of members of Plan E who elect to participate in the ~~Deferred Retirement Option Program provided for in Section 3-3-57~~DROP; however, upon the completion of the member's DROP period, the member shall be entitled to receive the ~~Pre-Social Security Benefit~~pre-social security benefit provided herein if he or she is not then entitled to an unreduced ~~Social Security Benefit~~social security benefit until the first month after such member is entitled to an unreduced ~~Social Security~~social security benefit.

- (b) Early service retirement. ~~A~~An amount which shall be determined in the same manner as for retirement at ~~his~~the member's normal retirement date with years of creditable service and average final compensation being determined as of the date of his or her actual retirement, and the amount of the retirement allowance so determined being reduced on an actuarial equivalent basis for the period that the actual retirement date precedes the normal retirement date; provided, ~~however,~~ that for members who retire after July 1, 1988, the amount provided for in Subsection (a)(1)(B) of this Section shall not be reduced on the actuarial equivalent basis.
- (1) The allowance for ~~participants in~~members of Plans A and C except those exempted under Subsection (b)(2) of this Section shall be reduced in accordance with the factors prescribed in Table 1.
- (2) The allowance for ~~participants in~~members of Plans B, D, and E and ~~participants in~~members of Plans A and C whose age plus creditable service equal seventy-five (75) shall be reduced in accordance with the factors prescribed in Table 2.
- (c) Joint and last survivor option. Before the normal retirement date, a member may elect to receive a decreased retirement allowance during his or her lifetime and to have such retirement allowance or a specified fraction thereof, continued after his or her death to the spouse, for his or her lifetime. The amount of such retirement allowance shall be determined on an actuarial equivalent basis and shall be calculated at the member's actual retirement date using the actuarial adjustment factors in Table 3. In the event a retired member has elected a reduced retirement allowance in consideration of continued allowance to his or her spouse after the member's death and such spouse predeceases the member, such member's retirement allowance shall be increased to that amount to which the member would have been entitled had no election been made. In the event a retired member who has elected the joint and last survivor option shall be divorced from his or her spouse, and such former spouse waives his or her rights to the benefits of the election of the joint and last survivor option, the retired member may revoke his or her joint and last survivor election; such revocation must be accompanied by a certified copy of a court order or decree containing the waiver of the spouse's rights under the joint and last survivor option election. Upon the provision of the request to revoke the election and the certified copy of a court order or decree containing the waiver of the spouse's rights under the joint and last survivor option election ~~to, the Executive Director, the Retirement Administration Agency~~ shall revoke the election and increase the member's retirement allowance to the amount it would have been had no joint and last survivor election ever been made. The effective date of the increase in the member's retirement allowance shall be the first of the month next following the submission of the request to revoke the election accompanied by a certified copy of a court order or decree containing the waiver of the spouse's rights under the joint and last survivor option election.

TABLE 1  
FAIRFAX COUNTY UNIFORMED RETIREMENT ~~PLAN~~SYSTEM  
Actuarial Reduction Factors That Would Apply to ~~Participants~~Members  
With a Normal Retirement Age Requirement of 25 Years of Service  
(or, Attainment of Age 55, if Earlier) if They Are Permitted To  
Retire Early With a Reduced ~~Pension~~Retirement Allowance After 20 Years of Service

(ASSUMES 4% COST-OF-LIVING ADJUSTMENTS ARE EFFECTIVE  
AT AGE 55 WITHOUT CATCH-UP PROVISION)

Age at Retirement	Years of Service					
	20	21	22	23	24	25
38	65.83	71.56	77.79	84.57	91.94	100.00

39	65.83	71.57	77.80	84.58	91.95	100.00
40	65.85	71.58	77.81	84.59	91.96	100.00
41	65.88	71.60	77.82	84.60	91.97	100.00
42	65.93	71.63	77.84	84.61	91.98	100.00
43	65.99	71.67	77.87	84.63	91.99	100.00
44	66.07	71.73	77.91	84.66	92.00	100.00
45	66.17	71.81	77.97	84.69	92.02	100.00
46	66.29	71.91	78.04	84.73	92.04	100.00
47	66.45	72.03	78.13	84.79	92.07	100.00
48	66.64	72.18	78.24	84.86	92.10	100.00
49	66.86	72.36	78.37	84.95	92.14	100.00
50	67.13	72.57	78.53	85.05	92.19	100.00
51	72.81	72.81	78.71	85.18	93.11	100.00
52	78.92	78.92	78.92	86.29	92.97	100.00
53	85.48	85.48	85.48	85.48	92.41	100.00
54	92.50	92.66	92.66	92.66	92.66	100.00
55	100.00	100.00	100.00	100.00	100.00	100.00

TABLE 2  
FAIRFAX COUNTY ~~POLICE AND~~ UNIFORMED RETIREMENT ~~PLANS~~ SYSTEM  
Actuarial Reduction Factors That Would Apply to ~~Participants~~ Members  
With a Normal Retirement Age Requirement of 25 Years of Service  
(or, Attainment of Age 55, if Earlier) if They Are Permitted To  
Retire Early With a Reduced ~~Pension~~ Retirement Allowance After 20 Years of Service

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(ASSUMES 4% COST-OF-LIVING ADJUSTMENTS  
ARE EFFECTIVE AT RETIREMENT)

Age at Retirement	Years of Service					
	20	21	22	23	24	25
38	74.50	79.17	84.06	89.18	94.48	100.00
39	74.18	78.89	83.83	89.01	94.39	100.00
40	73.84	78.61	83.60	88.84	94.30	100.00
41	73.49	78.32	83.37	88.67	94.21	100.00
42	73.11	78.01	83.13	88.50	94.12	100.00
43	72.72	77.68	82.88	88.33	94.03	100.00
44	72.32	77.34	82.61	88.14	93.93	100.00
45	71.89	76.98	82.34	87.95	93.83	100.00
46	71.44	76.61	82.04	87.75	93.73	100.00
47	70.97	76.22	81.74	87.53	93.62	100.00
48	70.48	75.81	81.41	87.31	93.50	100.00
49	69.96	75.38	81.08	87.07	93.38	100.00
50	69.42	74.92	80.72	86.83	93.25	100.00
51	74.45	74.45	80.35	86.57	93.11	100.00
52	79.95	79.95	79.95	86.29	92.97	100.00
53	86.00	86.00	86.00	86.00	92.82	100.00
54	92.66	92.66	92.66	92.66	92.66	100.00
55						

TABLE 3

FAIRFAX COUNTY UNIFORMED RETIREMENT ~~PLAN~~SYSTEM

Actuarial Adjustment Factors That Would Apply to ~~Participants~~Members  
 With a Normal or Early Service Retirement ~~Benefit~~Allowance Determined Under Section 3-3-33  
 Who Elect a Joint and Last Survivor Option

Percent of <del>Benefit</del> <u>Retirement</u> <u>Allowance</u> Continued to Spouse Upon <del>Participant</del> <u>Member</u> 's Death	Factor for Equal Ages	Increase/Decrease For Each Full Year Beneficiary is Older (Younger) Than Employee	Maximum Factor
100%	87%	0.7%	96%
75%	90%	0.6%	97%
66.67%	91%	0.5%	98%
50%	93%	0.4%	99%

(1961 Code, § 9-103; 11-74-9; 28-7-3; 20-81-3; 34-81-3; 36-83-3; 36-88-3; 29-89-3; 27-90-3, § 3; 48-96-3; 28-97-3; 13-98-3; 5-00-3; 17-02-3; 27-12-3; 51-13-3.)

## Section 3-3-34. - Ordinary disability retirement.

- (a) Any member in service who has five (5) or more years of creditable service may, at any time before his or her normal retirement date, retire on account of disability, not compensable under the Virginia Workers' Compensation Act, upon written application to the Board, made by the member or his or her appointing authority, setting forth at what time the retirement is to become effective; provided, that such effective date shall be after the last day of service, but shall not be more than ninety (90) days prior to the execution and filing of such application; and provided further, that the Medical Examining Board, after a medical examination of such member, shall certify that such member is, and has been continuously since such effective date if prior to the filing of such application, mentally or physically incapacitated for the further performance of duty, and that such incapacity is likely to be permanent and that such member should be retired.
- (b) Any member not in service at the time of application who is otherwise eligible for ordinary disability retirement may be granted an ordinary disability retirement if ~~and only if~~:
- (1) Written application is made within one (1) year of the date he or she ceased to be in service; and
  - (2) The Board finds:
    - (A) The disability arose in the course of the member's service;
    - (B) The disability was the proximate cause of the member's ceasing to be in service; and
    - (C) There was good cause for the employee not to have filed an application while in service.
- (c) In the event a member is granted an ordinary disability retirement pursuant to ~~subsection~~Subsection (b) of this ~~section~~Section, the Board shall establish an effective date which, considering all the circumstances of the individual case, is just; provided ~~however~~, such date shall be no more than ninety (90) days prior to the execution and filing of his or her application. (1961 Code, § 9-104; 11-74-9; 20-81-3; 48-96-3.)

Section 3-3-35. - Ordinary disability retirement allowance.

Upon ordinary disability retirement, as provided for in Section 3-3-~~34~~34, a member shall receive an annual retirement allowance, payable monthly during his or her lifetime and continued disability, consisting of an amount equal to two percent (2%) of his or her average final compensation multiplied by the number of years of creditable service. However, said retirement allowance shall not be greater than sixty percent (60%) of the member's average final compensation. (1961 Code, § 9-105; 11-74-9; 28-77-3; 20-81-3; 48-96-3.)

Section 3-3-36. - Service-connected disability retirement.

- (a) Any member in service may, at any time before his or her normal retirement date, retire on account of disability which is due to injury by accident and/or disease(s) which arose out of and in the course of the member's service. The Board shall determine a member is disabled due to injury by accident and/or disease(s) which arose out of and in the course of a member's service. In making this determination, the Board shall consult the decisions of the Virginia Workers' Compensation Commission ~~(formerly the Industrial Commission of Virginia)~~, the Court of Appeals of Virginia, and the Supreme Court of Virginia which applied or construed language under the Virginia Workers' Compensation Act. Furthermore, in making this determination, the Board shall consider any medical record or information and/or any further tests or examinations required pursuant to Section 3-3-10.1.
- (b) The member or his or her employer shall be required to submit a written application setting forth at what time the retirement is to become effective; provided, that such effective date shall be after the last day of service but shall not be more than ninety (90) days prior to the date of such application. Prior to submitting such application, the member shall be required to apply for all ~~Workers' Compensation and Social Security~~workers' compensation and social security benefits to which he or she may be entitled. The member shall also be required to submit to the Board copies of the dispositions as made of his ~~Workers' Compensation and Social Security~~or her workers' compensation and social security claims and any subsequent awards or other documents reflecting any modification or termination of such benefits. With respect to the determination of a member's eligibility for retirement under this Section, the Board shall give great weight to the decisions of the Virginia Workers' Compensation Commission, the Court of Appeals of Virginia, and the Supreme Court of Virginia on the compensability of his or her disability under the Virginia Workers' Compensation Act; and the Board may modify its prior determination of eligibility under this Section in light of any such decision within ninety (90) days after the date such decision becomes final.
- (c) Any member otherwise eligible for ordinary disability retirement under Section 3-3-34, who applies for retirement pursuant to this Section, and whom the Board finds to be disabled but not eligible for retirement under this Section, shall be retired pursuant to ~~the provisions of~~ Section 3-3-34.
- (d) Any member who applied for service-connected disability retirement on or before ~~the~~ (effective date of ~~Ord. No. 24-85-3~~amendment [December 16, 1985]) shall have his or her eligibility for such retirement governed by the provisions of this Section in effect on that date. Members applying thereafter shall have their eligibility determined by the provisions of this Section.
- (e) When an application for service-connected disability retirement has been submitted by a member or on his or her behalf by his or her employer, the appointing authority for the agency in which the member is employed ~~must~~shall certify whether or not there exist any vacant positions within the agency the essential physical job functions of which the member could perform, with or without reasonable accommodation; this certification shall be provided to the member and to the Board. The appointing authority shall have a continuing obligation to notify the member and the Board if any such position becomes vacant between the time of the appointing authority's initial certification and the Board's action on the member's retirement application. ~~Members~~A member who ~~have~~has applied for service-connected disability retirement who ~~meet~~meets the physical requirements for such ~~positions~~position, with or without reasonable accommodation, and who can be retrained to fulfill the other requirements for any such position shall be given the option to accept such position and withdraw his or her application for service-connected disability retirement or to decline such position and proceed with his or her application for service-connected disability retirement. A member shall have

seven (7) days from the date of the appointing authority's certification that a position is available to make his or her election as to whether he ~~will~~ or she shall accept the position or proceed with his or her retirement application; the failure of the member to make such election shall constitute an election to proceed with his or her application for retirement. In the event that the member elects not to accept a position for which he or she has received notification, the appointing authority shall have no further duty to notify the member and the Board of any further positions that may subsequently become available. In the event that no such positions are vacant or the member elects not to accept a vacant position, the application for service-connected disability retirement shall proceed to a determination by the Board. The certification by an appointing authority that no such positions exist within ~~his~~ the member's agency constitutes an application of specific County personnel policies, procedures, rules and regulations. (1961 Code, § 9-106; 11-74-9; 20-81-3; 24-85-3; 48-96-3; 34-04-3.)

Section 3-3-37. - Service-connected disability retirement allowance.

- (a) Any member who is receiving, or has been approved by the Board to receive, service-connected disability retirement, or who has applied for service-connected disability retirement, or whose employer has submitted as application for service-connected disability retirement for such employee as of December 9, 1996, under ~~the provisions of~~ Section 3-3-36, shall receive an annual retirement allowance, payable monthly during his or her lifetime and continued disability, consisting of an amount equal to ~~66 2/3~~ sixty-six-and-two-thirds percent (66 2/3%) of the salary the member received at the time of retirement. This allowance shall be reduced by ~~45~~ fifteen percent (15%) of the amount of any primary ~~Social Security~~ social security benefit to which the member is entitled ~~under any Federal Social Security Act~~ and by the amount of any compensation awarded under the Virginia Workers' Compensation Act ~~("the Act")~~ to the member for temporary total or partial incapacity; provided, however, that no reduction shall be made to a member's service-connected disability retirement allowance due to the member's entitlement to ~~Social Security~~ social security disability benefits in whole or in part as the result of a disability other than the disability that served as the basis for the award of service-connected disability retirement.
- (b) Any member who submits an application for service-connected disability retirement, or for whom his or her employer submits such application under ~~the provisions of~~ Section 3-3-36 on or after December 9, 1996, shall receive an annual retirement allowance, payable monthly during his or her lifetime and continued disability, consisting of an amount equal to ~~40~~ forty percent (40%) of the salary the member received at the time of retirement. However, this allowance shall be reduced by ~~45~~ fifteen percent (15%) of the amount of any primary ~~Social Security~~ social security disability benefit to which the member is entitled ~~under any Federal Social Security Act~~ and by the amount of any compensation awarded under the Virginia Workers' Compensation Act ~~("the Act")~~ to the member for temporary total or partial incapacity.
- (c) When the amount of a member's primary ~~Social Security~~ social security benefit has once been determined for purposes of applying the ~~45~~ fifteen percent (15%) reduction described in ~~paragraphs~~ Subsections (a) and (b) ~~above of this Section~~, the amount of the reduction shall not thereafter be increased on account of cost-of-living increases awarded under ~~any Federal Social Security Act~~ social security. However, the amount of the reduction shall be increased by an award of a cost-of-living increase to the member's compensation for temporary total or partial incapacity under the ~~Act~~ Virginia Workers' Compensation Act (Act). When the member is no longer entitled to receive payments for temporary total or partial incapacity under the Act because of the limits in the Act as to the total amount of such compensation or as to the period of time that the member is entitled to receive such compensation, the amount of such payments shall no longer be used to reduce the retirement allowance and, accordingly, subsequent monthly payments of the allowance shall be determined as if the original allowance had been computed without the reduction for such payments.
- (d) If a member receives his or her compensation for temporary total or partial incapacity under the Virginia Workers' Compensation Act (Act) in the form of a lump sum payment, he or she shall receive no monthly retirement allowance otherwise payable under this Section until such time as the amounts he or she would have received equal the amount of his or her lump sum benefit under the Act; provided, ~~however,~~ neither a lump sum payment or portion thereof representing compensation for permanent total or partial loss or disfigurement under the Act nor a lump sum payment or portion



thereof representing compensation for periods of temporary total or partial incapacity which occurred prior to the effective date of the member's retirement under Section 3-3-36 shall be offset against the member's allowance under this Section; and, provided further, that in the event the member receives a lump sum settlement of benefits that he or she is or may be entitled to in the future under the Act, and said settlement does not specify how much of the lump sum represents settlement of his or her entitlement to temporary total or partial incapacity, as opposed to other benefits, the Board shall determine the portion of such lump sum which in its judgment represents compensation for such benefits. (1961 Code, § 9-107; 11-74-9; 28-77-3; 20-81-3; 34-81-3; 4-83-3; 36-88-3; 29-89-3; 1-93-3; 48-96-3; 10-01-3; 23-07-3; 47-08-3; 23-11-3; 67-13-3, § ~~1~~1.)

Section 3-3-37.1. - Joint and last survivor option for disability beneficiaries.

A member of ~~this~~the System who applied for an ordinary or service-connected disability retirement allowance, including those members who are determined to be eligible for severe service-connected disability retirement by the Board, on or after July 1, 1988, may, before his or her actual retirement date, elect the joint and last survivor option provided by ~~Subsection~~Section 3-3-33(c). (36-88-3; 48-96-3.)

Section 3-3-37.2. - Severe service-connected disability retirement.

- (a) Any member in service may, at any time before his or her normal retirement date, be retired on account of a severe disability which is due to injury by accident and/or disease(s) which arose out of and in the course of the member's service. The Board shall determine whether a member has suffered a severe disability as defined herein due to injury by accident and/or disease(s) which arose out of and in the course of a member's service. In making this determination, the Board shall consult the decisions of the Virginia Workers' Compensation Commission ~~(formerly the Industrial Commission of Virginia)~~, the Court of Appeals of Virginia, and the Supreme Court of Virginia which applied or construed language under the Virginia Workers' Compensation Act. Furthermore, in making this determination, the Board shall consider any medical record or information and/or any further tests or examinations required pursuant to Section 3-3-10.1.
- (b) When a member or his or her employer submits a written application for service-connected disability retirement as set forth in Section 3-3-36, the Board shall determine whether the member meets the requirements for qualification to receive severe service-connected disability as set forth ~~herein~~in this Section. Prior to submitting such application, the member shall be required to apply for all ~~Workers' Compensation and Social Security~~workers' compensation and social security benefits to which he or she may be entitled. The member shall also be required to submit to the Board copies of the dispositions as made of his ~~Workers' Compensation and Social Security~~or her workers' compensation and social security claims and any subsequent awards or other documents reflecting any modification or termination of such benefits. With respect to the determination of a member's eligibility for retirement under this Section, the Board shall give great weight to the decisions of the Virginia Workers' Compensation Commission, the Court of Appeals of Virginia, and the Supreme Court of Virginia on the compensability of his or her disability under the Virginia Workers' Compensation Act; and the Board may modify its prior determination of eligibility under this Section in light of any such decision within ninety (90) days after the date such decision becomes final.
- (c) Any member otherwise eligible for ordinary disability retirement under Section 3-3-34 whom the Board finds to be disabled but not eligible for retirement under this Section, shall be retired pursuant to ~~the provisions of~~ Section 3-3-34. Any member otherwise eligible for service-connected disability retirement under Section 3-3-36 whom the Board finds to be disabled but not eligible for retirement under this Section, shall be retired pursuant to ~~the provisions of~~ Section 3-3-36.
- (d) ~~Severe disability is defined as~~shall mean an impairment from the list below that permanently incapacitates the member from performing the necessary duties of the position in which he or she had been employed prior to sustaining the impairment.
  - (1) Schedule of impairments:
    - (A) Loss of both hands or both feet;



- (B) Loss of one hand and one foot;
  - (C) Loss of one hand and the sight of one eye;
  - (D) Loss of one foot and the sight of one eye;
  - (E) Loss of the sight of both eyes;
  - (F) Paralysis, either paraplegia or quadriplegia;
  - (G) Cancers determined to be compensable by the Virginia Workers' Compensation Commission which were caused by documented contact with a toxic substance, pursuant to ~~Virginia Code §~~Section 65.2-402(c) ~~of the Code of Virginia~~;
  - (H) Loss of speech;
  - (I) Loss of hearing;
  - (J) A mental incapacity that meets the criteria for disability benefits under the Federal Old-Age Survivors' and Disability Insurance Act; or
  - (K) Hepatitis C.
- (2) ~~Loss means~~shall mean:
- (A) With respect to a hand or foot, the dismemberment by severance through or above the wrist or ankle joint, or the partial dismemberment resulting in the loss of functional use of the partially dismembered hand or foot.
  - (B) With respect to sight, central acuity of 20/200 or less with the use of correcting lenses or visual acuity greater than 20/200 if accompanied by a limitation in the field of vision that the widest diameter of the visual field subtends an angle no greater than 20 degrees. These standards apply to the affected eye if sight loss is claimed for one eye in combination with loss of a hand or foot, or to the better eye if sight loss is claimed for both eyes.
  - (C) With respect to hearing, a severe and irreversible bilateral loss of hearing that is not correctable with either the use of hearing aids or with corrective surgery.
- (e) For the purpose of this Section only, ~~the phrase "member in service"~~ shall ~~be defined to~~ include a member who has not reached his or her normal retirement date and who has been retired on account of a service-connected disability pursuant to the terms of Section 3-3-36.
  - (f) A member for whom an application for severe service-connected disability is approved by the Board shall not be required to submit to medical re-evaluations as required by Section 3-3-40. (48-96-3; 19-01-3; 7-03-3; 34-04-3.)

Section 3-3-37.3. - Severe service-connected disability retirement allowance.

- (a) Any member who retires pursuant to ~~the provisions of~~ Section 3-3-37.2 shall receive an annual retirement allowance, payable monthly during his or her lifetime, consisting of an amount equal to ~~90~~ninety percent (90%) of the salary the member was entitled to receive at the time of his or her retirement. This allowance shall be reduced by ~~15~~fifteen percent (15%) of the amount of any primary ~~Social Security~~social security benefit to which the member is entitled ~~under any Federal Social Security Act~~ and by the amount of any compensation awarded under the Virginia Workers' Compensation Act ~~("the Act")~~ to the member for temporary total or partial incapacity; provided, ~~however,~~ that no reduction shall be made to a member's service-connected disability retirement allowance due to the member's entitlement to ~~Social Security~~social security disability benefits in whole or in part as the result of a disability other than the disability that served as the basis for the award of service-connected disability retirement.
- (b) When the amount of a member's primary ~~Social Security~~social security disability benefit has once been determined for purposes of applying the ~~15~~fifteen percent (15%) reduction described in ~~paragraph~~Subsection (a) ~~above~~, the amount of the reduction shall not thereafter be increased on account of cost-of-living increases awarded under ~~any Federal Social Security Act~~social security.

However, the amount of the reduction shall be increased by an award of a cost-of-living increase to the member's compensation for temporary total or partial incapacity under the ~~Act~~Virginia Workers' Compensation Act (Act). When the member is no longer entitled to receive payments for temporary total or partial incapacity under the Act because of the limits in the Act as to the total amount of such compensation or as to the period of time that the member is entitled to receive such compensation, the amount of such payments shall no longer be used to reduce the retirement allowance and, accordingly, subsequent monthly payments of the allowance shall be determined as if the original allowance had been computed without the reduction for such payments.

- (c) If a member receives his or her compensation for temporary total or partial incapacity under the Virginia Workers' Compensation Act (Act) in the form of a lump sum payment, he or she shall receive no monthly retirement allowance otherwise payable under this Section until such time as the amounts he or she would have received equal the amount of his or her lump sum benefit under the Act; provided, however, neither a lump sum payment or portion thereof representing compensation for permanent total or partial loss or disfigurement under the Act nor a lump sum payment or portion thereof representing compensation for periods of temporary total or partial incapacity which occurred prior to the effective date of the member's retirement under Section 3-3-37.2 shall be offset against the member's allowance under this Section; and, provided further, that in the event the member receives a lump sum settlement of benefits that he or she is or may be entitled to in the future under the Act, and said settlement does not specify how much of the lump sum represents settlement of his or her entitlement to temporary total or partial incapacity, as opposed to other benefits, the Board shall determine the portion of such lump sum which in its judgment represents compensation for such benefits. (48-96-3; 10-01-3; 23-07-3; 47-08-3; 23-11-3; 68-13-3, § ~~1~~1.)

~~Note—Ordinance Number 47-08-3 amended this section to reduce the offset for the primary social security benefit from 40 percent to 30 percent. Section 2 of the Ordinance provides: "The effective date of this Ordinance amending Section 3-3-37.3 is July 1, 2008. The reduction of the offset for any primary Social Security benefit from 40% to 30% is to be applied to the calculation of the retirement allowance due to members who are receiving an allowance for severe service-connected disability under Section 3-3-37.2 on or after the effective date of this Ordinance. This change is prospective in application and is not retroactive. The Board of Trustees of the System and the staff of the Retirement Administration Agency are hereby authorized and directed to make all necessary changes in the calculation of a member's allowance to implement this amendment."~~

#### Section 3-3-38. - Service-connected accidental death benefit.

~~(a)~~ If death of a member is caused by an accident occurring prior to retirement and such death is compensable under the Virginia Workers' Compensation Act, there shall be paid, in addition to any other benefits of this Article or other legislation, the following:

~~(1a)~~ For a member whose death occurs before retirement:

- (A1) The member's accumulated contributions, as provided in Section 3-3-~~29~~, ~~Subsection 29~~(c), to ~~the~~his or her designated beneficiary duly approved, acknowledged, and filed with the Board, otherwise to the member's estate; provided, no benefit is payable under Section 3-3-43; and
- (B2) The sum of ~~Ten Thousand Dollars (\$10,000.00)~~ to ~~the~~his or her designated beneficiary duly approved, acknowledged, and filed with the Board, otherwise to the member's estate.

(2b) For a ~~person on~~member whose death occurs after retirement:

- (A1) The member's accumulated contributions, as provided in Section 3-3-~~29~~, ~~Subsection 29~~(c) less the amount of any retirement ~~allowance~~allowances previously received by the member, such sum to be paid to his or her designated beneficiary duly approved, acknowledged and filed with

the Board, otherwise to the member's estate; provided, no benefit is payable under Section 3-3-33; and

- (B2) The sum of ~~Ten Thousand Dollars (\$10,000.00)~~ to his or her designated beneficiary duly approved, acknowledged and filed with the Board, otherwise to the member's estate. ~~Designated beneficiaries under this Section may be changed from time to time pursuant to the procedure prescribed by the Board.~~ (1961 Code, § 9-108; 11-74-9; 5-85-3.)

Section 3-3-39. - Refund of contributions upon withdrawal or death; ~~and~~ deferred vested ~~benefits~~benefit.

(a) Refund of contributions.

- (1) If a member has ceased to be an employee, otherwise than by death or by retirement under the provisions of this Article, and has fewer than five (5) years of creditable service on his or her date of separation, he or she shall be eligible for a refund of the total of his or her accumulated contributions (with interest) which have been reduced by the amount of any retirement allowances previously received by him or her under ~~any of the provisions of~~ this Article. The member ~~must~~shall file a written application with the Board for such refund and he or she shall be paid the amount to which he or she is entitled not later than ninety (90) days after receipt of his or her application by the Board. Should a member or a person in retirement die, the amount of his or her accumulated contributions reduced by the amount of any retirement ~~allowances~~allowances previously received by him or her under ~~any of the provisions of~~ this Article shall then be payable in a lump sum to a designated beneficiary or in the absence of a designated beneficiary to his or her estate; provided, no benefit is payable under ~~Subparagraph (c) of Section 3-3-33. Such designated beneficiary may be changed from time to time by written notice by the member, signed and filed with the Board~~Section 3-3-33(c).
- ~~(b) If a member has five or more years of creditable service on his date of separation from the County, the member may leave his accumulated contributions in the fund and receive a deferred annuity payable beginning the date the member attains age 55. Members who choose a deferred vested annuity are not eligible to receive the Social Security supplement.~~
- (e2) A member who becomes eligible for membership in either the Virginia Retirement System (VRS) and the Educational Employees Supplemental Retirement System (~~Article 4 of Fairfax County~~ ERFC), the Fairfax County Employees' Retirement System (~~Article 2~~), or the Fairfax County Police Officers Retirement System (~~Article 7~~) prior to receipt of a refund amount may, under such rules and regulations as are adopted by the Board and by the board of the system of which he or she is eligible to become a member, elect in writing to transfer the amount of his or her refund directly from this System to the system for which he or she has become eligible for membership. In the alternative, to the extent that a refund is an "eligible rollover distribution" within the meaning of Section 402(f)(2)(A) of the Internal Revenue Code ~~Section 402(f)(2)(A)~~, such a member may (a) under rules and regulations of the system of which he or she is eligible to become a member, elect in writing to roll over the amount of his or her refund directly from this System to the system for which he or she has become eligible for membership or (b) elect in writing to roll over the portion of his or her refund which is such an eligible rollover distribution directly to an individual retirement account.
- (e3) All refunds shall be mailed to the last address on record with the Board. Refunds that have not been claimed within six (6) months shall become the property of the System.
- (b) Deferred vested benefit. If a member has five (5) or more years of creditable service on his or her date of separation from the County, the member may leave his or her accumulated contributions in the System and receive a deferred vested benefit payable beginning the date the member attains fifty-five (55) years of age. Members who choose a deferred vested benefit are not eligible to receive the pre-social security benefit. (1961 Code, § 9-109; 11-74-9; 20-81-3; 34-81-3; 5-85-3; 36-88-3; 45-93-3; 10-01-3; 01-11-3).

Section 3-3-40. - Medical ~~examination of beneficiary of disability retirement allowance~~ reevaluation of disabled members; penalty for unjustified refusal to accept medical attention ~~or~~ or vocational rehabilitation or selective employment, or to submit to medical examination.

- (a) Once each year during the first five (5) years following the retirement of a member on a disability retirement allowance, and once in every three- ~~(3)~~ (3) year period thereafter, the Board shall require any such beneficiary prior to his or her normal retirement date to undergo a medical examination by the Medical Examining Board. Should such a beneficiary refuse to submit to any such medical examination or unreasonably and without just cause or excuse refuse medical attention recommended by the Medical Examining Board, his or her disability retirement allowance shall be discontinued until his or her withdrawal of such refusal; and should his or her refusal continue for one (1) year, all his or her rights to any further disability retirement allowance shall cease.
- (b) Members who are beneficiaries of service-connected disability retirement allowances pursuant to Section 3-3-36, and who are receiving periodic payments from their employers pursuant to the Virginia Workers' Compensation Act (Act) which are required to be offset against the allowances pursuant to Section 3-3-37, shall cooperate with and accept medical services or vocational rehabilitation and/or selective employment provided by the employer pursuant to the ~~Virginia Workers' Compensation Act~~. In the event a member's periodic payments are suspended by the Virginia Workers' Compensation Commission ~~of Virginia~~ (Commission) for unjustified refusal to accept medical services, vocational rehabilitation and/or selective employment, the Board may, if in its determination such refusal was unjustified, direct that the allowance pursuant to Section 3-3-37 shall be computed as if the member received the suspended payments. The Board shall make appropriate adjustment to the member's allowance if the suspension by the ~~Workers' Compensation Commission of Virginia~~ is subsequently reversed or modified. Employers shall promptly notify the Board of any suspensions or releases from suspensions affecting members subject to this Subsection, for unjustified refusal creates a rebuttable presumption that the member unjustifiably refused medical services, vocational rehabilitation training, and/or selective employment.
- (c) The requirement for medical examinations of disability retirees established in this Section is not applicable to retirees who are receiving severe service-connected disability retirement benefits pursuant to Section 3-3-37.2. (1961 Code, § 9-110; 11-74-9; 28-77-3; 36-88-3.)

Section 3-3-41. - Reduction of service-connected disability retirement allowance.

Repealed by 11-94-3.

Section 3-3-42. - Cessation of disability retirement allowance.

- (a) Should a beneficiary of a disability retirement allowance return to service at any time prior to his or her normal retirement date, his or her disability retirement allowance shall cease, and he or she shall become ~~of~~ a member of the ~~system~~ System and contributions, in accordance with Section 3-3-26, shall resume. Any service on the basis of which his or her disability retirement allowance was computed shall thereafter be counted as creditable service; and, in addition, the period of disability retirement shall be counted as creditable service for those on service-connected disability retirement.
- (b) Any excess accumulated contributions of such beneficiary over the disability retirement allowances received by him or her shall be transferred from the retirement allowance account to the member's contribution account. (1961 Code, § 9-112; 11-74-9; 5-85-3.)

Section 3-3-43. - Cessation of normal or early service retirement allowance.

- (a) ~~The provisions of~~ Subsection (b) of this Section shall apply to persons who are receiving a normal or early service retirement allowance from this System, the Fairfax County Employees' Retirement System, or the Fairfax County Police Officers Retirement System and who submitted their application for such allowance to the Board of such system on or before July 21, 1986. ~~The provisions of~~ Subsection (c) of this Section shall apply to persons who are receiving a normal or early service retirement allowance from this System, the Employees' Retirement System, or the Police Officers

Retirement System and who submitted their application for such allowance to the Board of such ~~System~~system after July 21, 1986.

- (b) Should a person receiving a normal or early service retirement allowance from this System, the Fairfax County Employees' Retirement System, or the Fairfax County Police Officers Retirement System ("retiree") return to regular service in a permanent position in any office or employment paid directly or indirectly by ~~Fairfax~~the County, he or she shall elect to receive such retirement allowance under ~~the provisions of either Subsection (b)(1) or (b)(2) of this Section~~one (1) of the following two (2) options.
- (1) Such allowance shall not commence or, if already commenced, shall cease while the retiree is so employed. His or her allowance shall commence or resume upon application or reapplication by the retiree after he or she has ceased permanent employment in such a position. The allowance of a retiree of this System who is appointed to a position covered by the Employees' Retirement System or Police Officers Retirement System shall commence or resume at that cost-of-living adjustment amount pursuant to Section 3-3-55 which would have been payable had the retiree continued to receive his or her allowance without interruption. A retiree of this System who elects in writing at the time of reappointment to a position covered by this Article not to become a contributing member during the period of his or her reemployment shall be exempted from the requirement to make contributions to this System. A retiree of this System who elects in writing at the time of reappointment to a position covered by this Article to become a contributing member again during the period of his reemployment shall be eligible:
- (A) For a recomputation of his or her allowance to take into account compensation and creditable service attributable to the period of reemployment during which his or her allowance was suspended under this ~~Section~~Subsection;
- (B) To make new election for any optional benefit to which he or she is entitled; and
- (C) For a retirement allowance for a service-connected disability arising out of and in the course of his or her reemployment (in lieu of his or her service retirement allowance).

A retiree of the Employees' Retirement System or Police Officers Retirement System who is appointed to a position covered by this Article and elects in writing within thirty (30) days of such appointment may be excluded from membership in this System.

- (2) The retiree may elect to continue to receive his or her service retirement allowance. A retiree electing this option shall not be eligible for membership in the Employees' Retirement System or Police Officers Retirement System if either covers the position in which he or she is reemployed. If he or she is a retiree of this System and the position in which he or she is reemployed is covered by this System, he or she shall not be required to contribute to this System during his or her period of reemployment.
- (c) A person receiving a normal or early service retirement allowance from this System, the Fairfax County Employees' Retirement System, or the Fairfax County Police officers Retirement System ("retiree"); may return to employment for which compensation is paid directly or indirectly by ~~Fairfax~~the County subject to the following conditions:
- (1) A retiree shall not receive in combined compensation and retirement allowance, computed monthly, any more than one-hundred-fifteen percent (115%) of the then current maximum monthly salary for a Deputy County Executive in the County's Compensation Plan. The appropriate ~~Board is authorized and directed to~~Retirement System Board of Trustees shall reduce the retiree's allowance as necessary to keep the combined salary and allowance at this limit. For purposes of this Subsection, a retiree's allowance shall be deemed to be the allowance that he or she would receive if he or she had not elected a joint or last survivor option which results in an actuarially reduced allowance. Employers under all three (3) systems shall report salaries paid to retirees to the retiree's Board.
- (2) A retiree who is employed in a position service in which would otherwise make him or her eligible for membership in this System, the Employees' Retirement System, or the Police Officers Retirement System, shall not be eligible for membership in that system.



- (d) Notwithstanding any other provision of this Article or any other Article of this Chapter, a ~~retiree~~person receiving a normal or early service retirement allowance from this System, the Fairfax County Employees' Retirement System, or the Fairfax County Police Officers Retirement System (retiree) may be employed in a position under his or her former appointing authority subject to the following terms and conditions.
- (1) If the retiree is a member of this System and service in the position to which he or she is to be appointed ordinarily would result in membership this System, his or her normal or early service retirement allowance shall be suspended for the duration of his or her new employment. During his or her new employment, he or she shall make member contributions to this System. At the time of his or her new employment, he or she shall be entitled to make all elections available to new members of this System, and if otherwise eligible, during his or her employment, he or she may apply for ordinary or service-connected disability retirement. In such case, his or her combined years of service and his or her average final compensation based on his or her new employment shall be used in calculating the disability retirement allowance. On re-application for service retirement from his or her new employment, the retiree shall receive as his or her service retirement allowance the higher of (i) his or her initial service retirement allowance increased by any cost-of-living increases that were granted by the Board to service retirements during the period of his or her new employment or (ii) a service retirement allowance calculated on the basis of his or her combined years of creditable service in his or her initial and new employment and his or her average final compensation calculated on the basis of the creditable compensation that he or she received during both his or her initial and new employment, as if there had been no break in service.
  - (2) A retiree who is a member of this System and who is to be re-appointed to a position service in which would result in membership in either the Employees' Retirement System or Police Officers Retirement Systems but for his or her membership in this System, shall be subject to ~~the provisions of~~ Subsection (b) or (c) of this Section, whichever is applicable.
  - (3) If the retiree is a member of either the Employees' Retirement or Police Officers Retirement Systems and service in the position to which he or she is to be appointed would result in membership in this System but for this membership in the other system, the retiree shall be subject to ~~the provisions of~~ Subsection (b) or (c) of this Section, whichever is applicable.
  - (4) ~~The provisions of this~~ This Subsection ~~(d)~~ shall apply to all persons appointed to positions on or after March 1, 1990, service in which would ordinarily make them members of this System, the Employees', ~~Uniformed Retirement System~~, or Police Officers Retirement Systems. (20-81-3; 35-81-3; 36-86-3; 27-90-3, § 3; 10-01-3; 11-05-3.)

Section 3-3-44. - Spouse retirement allowance.

- (a) Should death occur to a member in service who has completed five (5) years of creditable service, a retirement allowance shall be payable to the member's spouse if said spouse is the designated beneficiary duly approved, acknowledged and filed with the Board. The annual retirement allowance, payable monthly for life shall be ~~50~~fifty percent (50%) of the annual retirement allowance provided in the first sentence of ~~Subparagraph (a) of~~ Section 3-3-~~33, 33(a)~~, with creditable service and final compensation being determined as of the date of the member's death. Said spouse shall elect within ninety (90) days after notice by the Board of ~~Trustees of~~ the option of receiving the benefits outlined ~~above~~ in this ~~Section~~Subsection or a lump sum payment of the member's accumulated contributions as provided in Section 3-3-~~39 herein, 39~~, or within one-hundred-eighty (180) days of the death of the member, whichever first occurs. If death is due to a service-connected accident as defined in Section 3-3-38, and the designated beneficiary under Section 3-3-38(1)(A) is the member's spouse, the spouse shall elect in writing within ninety (90) days after the notice by the Board ~~of Trustees~~, or within one-hundred-eighty (180) days of the death of the member, whichever first occurs, to receive either the benefits contained in this ~~Section~~Subsection or those contained in Section 3-3-38(1)(A). In the event of the spouse's death prior to receiving allowances under this Section equaling the sum of the member's accumulated contribution, said sum, reduced by the amount of any retirement allowances previously

paid under this Section, shall be paid to the spouse's designated beneficiary duly approved, acknowledged and filed with the Board, otherwise the spouse's estate.

- (b) Should death occur to a member in service who has completed five (5) years of creditable service and if the member's designated beneficiary, duly approved, acknowledged and filed with the Board, is not the member's spouse, a lump sum payment equaling the member's accumulated contribution as provided in Section 3-3-29(c), shall be paid to the designated beneficiary.
- (c) Should death occur to a member in service who has completed five (5) years of creditable service and the member has no designated beneficiary, a lump sum payment equaling the member's accumulated contribution shall be paid to the member's estate; provided, that, if such member's spouse is the sole person entitled under the laws of the Commonwealth of Virginia to the benefits provided hereunder, then said spouse shall have the same right to elect benefits as is provided to spouses in Subsection (a) of this Section ~~3-3-44(a) above~~.
- (d) Effective on and after January 1, 2007, if a member dies while performing "qualified military service" as defined in Section 414(u) of the Internal Revenue Code, any additional benefits that would have been provided under the System if the member had resumed employment on the day prior to his or her death and then terminated employment due to death shall be paid to such member's designated beneficiary or, if applicable, estate. (1961 Code, § 9-113; 11-74-9; 28-77-3; 20-81-3; 5-85-3; 29-09-3; 01-11-3.)

Section 3-3-45. - Cost-of-living adjustments.

Monthly retirement allowances shall be adjusted effective July 1, 1981, and each July 1 thereafter in order to reflect changes in the cost of living since the date of benefit commencement; provided, ~~however,~~ that such adjustments shall not affect the amount of the ~~Social Security~~ social security benefit allowance payable pursuant to Section 3-3-33(a)(1)(B) or Section 3-3-33(a)(2)(B); and, provided further, that allowances for service-connected disability retirement shall be subject to ~~the provisions of~~ Subsection (d) of this Section. The monthly benefit allowance to be effective July 1 of any such year shall be the benefit in effect immediately prior to such adjustment increased for the basic cost-of-living increase provided for in Subsection (a) of this Section and the supplemental cost-of-living increase if any, provided for in Subsection (b) of this Section with such ~~increases~~ increase reduced as provided in Subsection (c) of this Section in the event the monthly retirement allowance has been in pay status for less than twelve (12) months.

- (a) The basic cost-of-living increase shall be the lesser of four percent (4%) and the percentage corresponding to the percentage increase in the Consumer Price Index during the twelve (12) month calendar period ending with the March immediately preceding the July in which the increase is effective. For the purpose of this Section, "~~Consumer Price Index~~" shall mean the Consumer Price Index for all Urban Consumers (~~CPI~~ CPI-U) as issued by the Bureau of Labor Statistics of the U.S. Department of Labor for the appropriate Standard Metropolitan Statistical Area (SMSA) that includes ~~Fairfax~~ the County, ~~Virginia~~.
- (b) As part of each biennial actuarial valuation, the actuary shall determine the percentage supplemental cost-of-living increase (not greater than one percent (1%) that can be provided on the following two July ~~first~~ firsts (1st's) based upon the available actuarial surplus). The ~~trustees~~ Board then may, but shall not be required to, increase the benefits of all retirement allowances in pay status on each of such July first's (1st) by such actuarially determined percentage. For the purpose of this Section, "~~available actuarial surplus~~" shall mean the excess of the actuarial value of the assets of the System over the actuarial accrued liabilities of the System as disclosed in the biennial actuarial valuation of the System.
- (c) In the event a member receiving a retirement allowance has not been in pay status for twelve (12) full months, the basic cost-of-living increase and the supplemental cost-of-living increase shall be determined as the percentage of the full increase determined in Subsections (a) and (b) above of this Section as follows:

Number of Complete Months

Percentage of

Benefit Has Been in Pay Status

Full Increase

Less than 3 .....0%

3, 4 or 5 .....25%

6, 7 or 8 .....50%

9, 10 or 11 .....75%

- (d) Cost-of-living adjustments provided by this Section shall be applied to the net amount of the member's service-connected disability retirement allowance after all reductions required by Section 3-3-37 have been made. The member's allowance after the adjustments for cost of living provided by this Section at any date in time shall be determined by retroactive computation from the date of initial retirement, and the application of all applicable cost-of-living adjustments to the net allowance which the member is entitled to under Section 3-3-37.
- (e) The ~~County~~Board of Supervisors reserves the right to amend, terminate or modify the post -retirement increases described in Subsection (b) of this Section. Upon termination, no further increases to allowances shall be due or payable to any member ~~receiving a retirement allowance~~ or beneficiary. However, any such amendment, termination or modification shall not reduce the amount of the allowance then being paid to any member or beneficiary who has received allowances as of the date of the amendment, termination or modification. Furthermore, no amendment, termination or modification shall reduce the rights of any member as of June 30, 1981, to increases such member was entitled to based upon the terms of the ~~ordinance~~plan in effect on June 30, 1981. (1961 Code, § 9-114; 11-74-9; 20-81-3; 1-93-3; 26-10-3.)

Section 3-3-46. - Social Security benefit proviso.

If a ~~beneficiary~~member does not qualify for or loses any primary ~~Social Security~~social security benefits to which he ~~or she~~ is entitled under ~~the Federal Social Security Act~~social security, because of his ~~or her~~ failure to make application therefor or because of his ~~or her~~ violation of the Social Security Act or because of any disqualification resulting from the earned income of the member, such primary ~~Social Security~~social security benefit shall nevertheless be considered as being received by such beneficiary for the purposes of this Article. (1961 Code, § 9-115; 11-74-9; 20-81-3; 36-88-3.)

Section 3-3-47. - Retention rights.

Participation in the ~~system~~System does not convey the right to be retained in service, or any right or claim ~~off~~to any assets of the ~~system~~System unless such right has specifically accrued under ~~the provisions of the system~~this Article. (1961 Code, § 9-116; 11-74-9; 20-81-3.)

Section 3-3-48. - Vesting on termination of ~~system~~System; nonreversion of funds.

Upon termination of the ~~system~~System or upon complete discontinuance of contributions to the ~~system~~System, the rights of all members to benefits accrued to the date of such termination or discontinuance, to the extent then funded, are non-forfeitable. No portion of the assets of the ~~system~~System shall be used for, or diverted to, purposes other than for the exclusive benefit of the members and their beneficiaries prior to the satisfaction of all liabilities with respect to members and their beneficiaries. (1961 Code, § 9-117; 11-74-9; 20-81-3.)

Section 3-3-49. - Nonretroactivity to members ~~terminating~~retired or terminated prior to July 1, 1974.

The benefits provided by this ~~Chapter~~Article shall not apply to members retired or terminated prior to July 1, 1974, and their rights and benefits shall be determined under the ordinance in effect prior thereto.



However, retirement allowances determined thereunder shall be subject to post-1974 cost of living adjustments. (1961 Code, § 9-118; 11-74-9; 20-81-3.)

Section 3-3-50. - Review of adverse decisions.

Any member adversely affected by a decision of the Board shall receive written notice of said decision and may, within thirty (30) days of receipt of such notice, request in writing a review by the Board of said decision, pursuant to procedures established by the Board. (20-81-3.)

Section 3-3-51. - Transfer to Senior Executive Retirement Plan.

Repealed by 97-26-97-3.

Section 3-3-52. - Masculine usage includes feminine.

~~The masculine, whenever used herein, shall include the feminine. (20-81-3.)~~ Repealed by 16- -3.

Section 3-3-53. - Limitation on annual retirement allowance.

Notwithstanding any other provision of this Article, the annual retirement allowance to which any member may be entitled shall not exceed the limits on benefits set forth in Section 415 of the Internal Revenue Code and any regulations issued by the U.S. Department of the Treasury ~~Regulations issued~~ thereunder, and in calculating such limits a member's compensation shall include any differential wage payments for military service as defined under Section 3401(h)(2) of the Internal Revenue Code and paid on or after January 1, 2009. Such limits shall be applied annually for the twelve (12-) month period commencing each July 1 and ending the following June 30. A benefit payable other than in the form of an annuity shall not exceed the amount which, when converted to an actuarial equivalent annual benefit, does not exceed the limits on benefits set forth in Section 415(b) of the Internal Revenue Code. Effective June 30, 2000, the mortality tables prescribed by the Uruguay Round Agreement Acts (GATT), as set forth in Internal Revenue Service ~~Rev. Rul.~~ Revenue Ruling 2001-62 (superseding and modifying ~~Rev. Rul.~~ Revenue Ruling 95-29), or as further updated or modified by the Internal Revenue Service, shall be used in determining the actuarial equivalent amount of such benefit. (27-90-3, § 4; 21-96-3; 8-03-3; 01-11-3.)

Section 3-3-54. - Distribution of benefits.

Notwithstanding any other provision of this Article, effective for plan years beginning after December 31, 1986, the entire interest of each member shall be distributed to such member not later than the required beginning date specified below, or ~~will~~ shall be distributed, beginning not later than the required beginning date, over the life of such member or over the lives of such member and a beneficiary or over a period not extending beyond the life expectancy of such member or the life expectancy of such member and a beneficiary. For this purpose, the term ~~"required beginning date"~~ ~~means~~ shall mean April 1 of the calendar year following the later of the calendar year in which the member attains ~~age seventy-and-half (70½) years of age~~, or the calendar year in which the member retires. If a member dies after distribution of the member's interest has begun, the remaining portion, if any, of such interest shall be distributed at least as rapidly as under the method of distribution being used as of the date of death. If a member dies before the distribution of the member's interest has begun, any death benefit shall be distributed within five (5) years after the death of such member, unless (1) any portion of the member's interest is payable to (or for the benefit of) a designated beneficiary, (2) such portion ~~will~~ shall be distributed over the life of such beneficiary or over a period not extending beyond the life expectancy of such beneficiary, and (3) if the beneficiary is someone other than the member's surviving spouse, such distributions ~~will~~ shall begin not later than one (1) year after the date of the member's death or such later date as the U.S. Secretary of the Treasury may by regulations prescribe. If the beneficiary is the surviving spouse of the member, (1) distribution shall begin on or before the latest of one (1) year after the date of the member's death, such later date as the U.S. Secretary of the Treasury may by regulations prescribe, or the date on which the member would have attained seventy-and-a-half (70½) years of age ~~70½~~ and (2) if the surviving spouse dies before the distributions to such spouse begin, the distribution rules specified in this ~~paragraph~~ Section shall be applied as if the

surviving spouse were the member. Distributions from the System ~~will~~shall be made in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code, including the rules for incidental death distributions set forth at Section 401(a)(9)(G). (27-90-3, § 4; 51-13-3.)

Section 3-3-55. - Direct rollovers to other plans.<sup>11</sup>

(a) General. This Section ~~3-3-55~~ applies to distributions made on or after January, 1, 1993. Notwithstanding any provision of the System to the contrary that would otherwise limit a distributee's election under this Section ~~3-3-55~~, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. However, to the extent that any portion of the amount of the rollover is comprised of after-tax contributions, the distribution may only be rolled over to an eligible retirement plan that separately accounts for after-tax contributions.

(b) ~~Definition.~~ Definitions.

(1) *Eligible rollover distribution.* ~~An eligible rollover distribution is~~ shall mean any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includible in gross income.

(2) *Eligible retirement plan.* ~~An eligible retirement plan is~~ shall mean any one of the following that accepts the distributee's eligible rollover distribution: an individual retirement account described in Section 408(a) of the Internal Revenue Code; an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; an annuity plan described in Section 403(a) of the Internal Revenue Code; a qualified trust described in Section 401(a) of the Internal Revenue Code; an annuity contract described in Section 403(b) of the Internal Revenue Code; an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state; or effective for distributions made after December 31, 2007, a Roth IRA described in Section 408A of the Internal Revenue Code, provided the eligible rollover distribution is considered a "qualified rollover contribution" under Section 408A(e) ~~of the Internal Revenue Code~~. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(3) *Distributee.* ~~A distributee includes~~ shall mean a member or former member. In addition, the member's or former member's surviving spouse and the member's or former member's spouse or former spouse who is entitled to receive benefits from the System, ~~are~~ shall be distributees with regard to the interest of the spouse or former spouse. Effective for distributions on or after January 1, 2010, a distributee ~~includes~~ shall include a non-spouse beneficiary of a deceased member or former member who may make an eligible rollover distribution in a direct trustee-to-trustee transfer to an "inherited" individual retirement account.

(4) *Direct rollover.* ~~A direct rollover is~~ shall mean a payment by the System to the eligible retirement plan specified by the distributee. (45-93-3; 21-96-3; 8-03-3; 01-11-~~33~~3.)

~~Footnotes:~~

~~—()~~

~~10. Editor's note—Ord. No. 45-93-3 added § 3-3-54, which the editor has, redesignated § 3-3-55 since Ord. No. 27-90-3, § 4, had previously added § 3-3-54.~~

Section 3-3-56. - Additional retirement allowance.

- (a) ~~For purposes of this section only, the following words and phrases shall have the following meanings:~~  
Definitions.
- (1) *Active member* shall mean a member of ~~this~~the System who is an employee on July 1, 1995, or who became an employee thereafter, and whose membership in ~~this~~the System has not ceased at any time from July 1, 1995, or from when he or she became an employee (whichever is later), until the effective date of his or her subsequent retirement.
  - (2) *Retired member* shall mean a member of ~~this~~the System who is receiving a retirement allowance on July 1, 1995. ~~The term "A member of this System who is receiving a retirement allowance" includes those members~~ shall include any member whose effective date of retirement is on or before July 1, 1995.
  - (3) *Retirement allowance* shall mean a normal service retirement allowance, an early service retirement allowance, an ordinary disability retirement allowance, a deferred ~~annuity under the provisions of Section 3-3-39(b)~~vested benefit, or a spouse retirement allowance ~~under the provisions of Section 3-3-44.~~
  - (4) *Base annual retirement allowance* ~~means~~shall mean the initial calculation of a member's or spouse's annual retirement allowance without regard for any deductions for withholding or other benefit elections or adjustments under Section 3-3-8. For a member ~~retired pursuant to taking normal service retirement under~~ Section 3-3-32(a) ~~(normal service)~~, this is the allowance calculated under Section 3-3-33(a)(1) (post-age fifty-five (55) years) or Section 3-3-33 (a)(2) (pre-age fifty-five (55) years) less any additional allowance under Section 3-3-33(a)(1)(B); for a member ~~retired pursuant to taking early retirement under~~ Section 3-3-32(b) ~~(early retirement)~~, this is the allowance calculated under Section 3-3-33(b), less any additional allowance under Section 3-3-33(a)(1)(B); for a member retired on account of ordinary disability under Section 3-3-34, this is the allowance calculated under Section 3-3-35; for a member receiving a deferred ~~annuity benefit, this is~~ the allowance calculated under ~~the provisions of Sections~~Section 3-3-39(b); and for a spouse receiving a spouse retirement allowance, this is the allowance calculated under ~~the provisions of~~ Section 3-3-44.
  - (5) *Adjusted base annual retirement allowance* shall mean the base annual retirement allowance of a retired member or of the spouse of a member receiving the base spouse annual retirement allowance provided under Section 3-3-44, as increased by any cost-of-living adjustments applied to the member's or spouse's retirement allowance from the effective date of his or her retirement or election of the spouse retirement allowance through July, 1, 1995.
  - (6) ~~A member is "Member in service" for purposes of this~~ shall mean a member of the System.
- (b) The adjusted base annual retirement allowance of each retired member or spouse receiving a retirement allowance on July 1, 1995, shall be increased by three percent (3%), effective July 1, 1995 (modified adjusted base annual retirement allowance). Adjustments to the retired member's or spouse's retirement allowance made under the provisions of this Article after July 1, 1995, shall be computed on the basis of the modified adjusted base annual retirement allowance.
  - (c) When an active member retires or an eligible spouse of an active member elects to receive the spouse retirement allowance after July 1, 1995, after his or her base annual retirement allowance has been computed under the ~~provisions of the~~ applicable ~~section~~Section of this Article, the resulting base annual retirement allowance shall be increased by three percent (3%) (initial base annual retirement allowance). ~~Future adjustments~~Adjustments to the member's or spouse's retirement allowance under ~~the provisions of~~ this Article shall be computed on the basis of the initial base annual retirement allowance.
  - (d) If a member is entitled to the three percent (3%) increase in the base retirement allowance provided by either ~~subsection~~Subsection (b) or (c) of this Section and if at the time he or she is entitled to such increase, he or she is also eligible to receive in whole or in part the additional allowance provided by Section 3-3-33(a)(1)(B) under any provision of this Article, such additional allowance shall be also increased by three percent (3%).
  - (e) ~~Effect of separation~~Separation from service.

- (1) A member who:
  - (A) Separated from service other than by death or retirement with five (5) or more years of creditable service in ~~this~~the System prior to July 1, 1995, and
  - (B) Has not withdrawn his or her accumulated contributions as of July 1, 1995, and
  - (C) Subsequently applies for and is determined to be eligible for a deferred ~~annuity~~vested benefit after July 1, 1995, shall have his or her deferred ~~annuity~~vested benefit computed mutatis mutandi in the same manner as an active member under ~~subsection~~Subsection (c) of this Section.
- (2) A member in service on or after July 1, 1995, who:
  - (A) Subsequently separates from service other than by death or retirement with five (5) or more years of creditable service in ~~this~~the System, and
  - (B) Does not ~~withdraw~~withdraw his or her accumulated contributions, and
  - (C) Subsequently applies for and is determined to be eligible for a deferred ~~annuity~~vested benefit, shall have his or her deferred ~~annuity~~vested benefit computed mutatis mutandi in the same manner as an active member under ~~subsection~~Subsection (c) of this Section.
- (3) A member in service on or after July 1, 1995, who,
  - (A) Subsequently separates from service other than by death or retirement with five (5) or more years of creditable service in ~~this~~the System, and
  - (B) Does not withdraw his or her accumulated contributions, and
  - (C) Thereafter, returns to service and again becomes a member of ~~this~~the System, and
  - (D) Subsequently applies for and is determined to be eligible for a normal service, early service, or ordinary disability retirement allowance, or for a deferred ~~annuity~~vested benefit, shall have his or her allowance or deferred ~~annuity~~vested benefit computed mutatis mutandi in the same manner as an active member under ~~subsection~~Subsection (c) of this Section.
- (4) A member in service on or after July 1, 1995, who:
  - (A) Thereafter separates from service, and
  - (B) Withdraws his or her accumulated member's contributions, and
  - (C) Subsequently returns to service and again becomes a member of ~~this~~the System, and
  - (D) At that time makes arrangements to purchase credit for all of his or her previous service in ~~this~~the System under ~~the provisions of~~ this Article, and
  - (E) Thereafter applies for and is determined to be eligible for a normal service, early service, or ordinary disability retirement or for a deferred ~~annuity~~vested benefit, shall have his or her allowance or deferred ~~annuity~~vested benefit computed mutatis mutandi in the same manner as an active member under ~~subsection~~Subsection (c) of this Section.
- (f) The spouse of a member who retired on a normal service, early service or ordinary disability retirement who is receiving an allowance under the joint and last survivor option provided by Section 3-3-33(c), on July 1, 1995, shall have such allowance increased by three percent (3%), effective July 1, 1995. Adjustments to such allowance under ~~the provisions of~~ this Article after July 1, 1995, shall be computed on the basis of this increased allowance.
- (g) Notwithstanding the sixty percent (60%) of average final compensation limit contained in Section 3-3-35, the initial base annual retirement allowance of an active member who becomes eligible to receive an ordinary disability retirement allowance and who is entitled to the increase provided by ~~subsection~~Subsection (c) of this Section shall not exceed sixty-one and eight-tenths (61.8%) of his or her average final compensation.

- (h) Notwithstanding any provision of this Section to the contrary, no adjustment under ~~the provisions of~~ this Section shall be made which would violate the limitations provided by Section 3-3-53 concerning the limitations imposed by Section 415 of the Internal Revenue Code and ~~the U.S.~~ Treasury regulations issued thereunder; provided, ~~however,~~ that any adjustment under ~~the provisions of~~ this Section may be made up to those limitations. (12-95-3.)

Section 3-3-57. - Deferred Retirement Option Program.

Effective October 1, 2003, there is hereby established a Deferred Retirement Option Program ("~~DROP~~") for eligible members of ~~this~~the System. Members of the System in service who are eligible for normal service retirement are eligible to elect to participate in this program.

(a) Definitions.

- (1) *DROP period* ~~means~~shall mean the three- (3) year period immediately following the commencement of the member's participation in the DROP.
- (2) *Eligible member* ~~means~~shall mean any member who is, or ~~will~~shall become within sixty (60) days, eligible for normal service retirement benefits as those are defined in §Section 3-3-32(a).

(b) Election to participate.

- (1) An eligible member may participate in the DROP only once. An eligible member who desires to participate in the DROP must file an application with the Fairfax County Retirement Administration Agency not less than sixty (60) days prior to the date of the commencement of the member's participation in the DROP.
- (2) A member's election to participate in the DROP is irrevocable, with the exception that a member who elects to participate in the DROP may revoke that election prior to the commencement of his or her DROP period; once revoked, a member may not then elect to participate in the DROP for a period of at least twelve (12) months from the date of his or her revocation.
- (3) At the time of an eligible member's election to participate in the DROP, he or she must make an election in writing pursuant to §Section 3-3-33(c) as to whether or not to receive a reduced retirement allowance in order to provide a retirement allowance for his or her spouse after the member's death.
- (4) An eligible member who elects to participate in the DROP ~~will~~shall agree to do so for a period of three (3) years.
- (5) Subject to any limitation on the number of accrued sick leave hours that may be converted to creditable service as provided in Section 3-3-1(a)(1), an eligible member who elects to participate in the DROP shall, at the time of his or her election to participate in the DROP, make an election in writing as to whether he or she wishes to convert all of his or her available accrued sick leave to creditable service or to convert all but forty (40) hours of his or her accrued sick leave to creditable service. Sick leave that is either carried over or that accrues during the DROP period shall not be converted to creditable service at the conclusion of the DROP period.

(c) Continued employment.

- (1) A participating DROP member shall, upon commencement of his or her DROP period, continue to work for the County in the position he or she held before the effective date of his or her election to participate in the DROP ~~program~~. Thereafter, the participating DROP member ~~will~~shall perform the services of that position or any other position to which he or she is promoted or transferred.
- (2) A participating DROP member ~~will~~shall continue to accrue annual and sick leave and, if eligible, compensatory time during the DROP period. At the conclusion of the DROP period, the member ~~will~~shall receive the payment for his or her accrued annual and compensatory leave that he or she would have received upon retirement. In no case ~~will~~shall a participating DROP member receive payment for his or her accrued annual and compensatory leave at the commencement of the member's participation in the DROP.



- (3) A participating DROP member ~~will~~shall continue to remain eligible for health and life insurance benefits provided by the County to its employees and ~~will~~shall remain eligible to participate in the County's deferred compensation plan. The deductions from the salary of a participating DROP member for health and life insurance ~~benefit will~~benefits shall be the same deductions that would have been taken had the participating DROP member been an active County employee, not the deductions that would be taken from the retirement ~~benefits and~~ allowances and benefits of a retiree.
  - (4) All County personnel policies and regulations shall continue to apply to a participating DROP member after the commencement of his or her DROP period. A participating DROP member ~~will~~shall remain eligible for annual merit pay increments and promotions during the DROP period. However, a participating DROP member's salary during his or her DROP period ~~will~~shall not be included in the computation of the member's average final compensation. A participating DROP member is also subject to the County's disciplinary policies and regulations.
  - (5) If a participating DROP member's continued employment with ~~Fairfax~~the County is interrupted by military service, there ~~will~~shall be no interruption of the member's participation in the DROP. During the period of the participating DROP member's military service, the member's retirement ~~benefits and~~ allowances ~~will~~and benefits shall continue to be paid into the participating member's DROP account until the member's DROP period ends. At the end of the DROP period, the member's DROP account balance ~~will~~shall be paid to the member whether or not he or she has returned to his or her former County position, and the member ~~will~~shall begin to receive his or her normal retirement benefits.
  - (6) Except as otherwise set forth herein, a participating DROP member's continued service ~~will~~shall be deemed to be normal service retirement and ~~will~~shall not count as creditable service with the System.
  - (7) Upon commencement of a participating DROP member's DROP period, the County ~~will~~shall cease to withhold contributions to the System from the participating DROP member's salary.
  - (8) The salary received by a participating DROP member during his or her DROP period ~~will~~shall not be included by the County in the base that is used to determine the amount of the County's employer contributions to the System.
- (d) DROP account.
- (1) Upon commencement of the participation of a member of the four plans that existed before January 1, 2013 (Plans A, B, C, and D), ~~who was~~ whose ~~county~~County employment commenced by reporting for work before January 1, 2013, in the DROP, the member's service retirement allowance pursuant to §Section 3-3-33(a) and the additional retirement allowance pursuant to §Section 3-3-56 ~~will~~shall be paid into the member's DROP account. Upon commencement of the participation of a member of Plan E, ~~who was~~ whose ~~county~~County employment commenced by reporting for work on or after January 1, 2013, in the DROP, the member's service retirement allowance pursuant to §Section 3-3-33(a) ~~will~~shall be paid into the member's DROP account; the additional retirement benefits provided for in §Section 3-3-33(a)(3) shall not be credited to the DROP accounts of members of Plan E, although members of Plan E shall remain eligible to receive the additional retirement benefits provided for in §Section 3-3-33(a)(3) upon the completion of their DROP period, if they then meet the requirements for eligibility for such benefits set forth in §Section 3-3-33(a)(3). The initial amount credited to a member's DROP account ~~will~~shall be computed based on his or her average final compensation as of the date of the commencement of the DROP period.
  - (2) The initial monthly amount ~~will~~shall be increased each July 1 based upon the annual cost ~~of~~ living adjustment provided to retirees pursuant to §Section 3-3-45. Any other changes that occur during the DROP period that would result in an alteration of the participating DROP member's retirement ~~benefits and~~ allowances and benefits if he or she were retired ~~will~~shall also result in adjustments to the monthly amount credited to a participating DROP member's DROP account.

- (3) The participating DROP member's DROP account ~~will~~shall be credited with interest at an annual rate of five percent (5%), compounded monthly. Interest ~~will~~shall not be pro-rated for any period less than a full month.
  - (4) Contributions by the County and the participating DROP member into the System for the participating DROP member ~~will~~shall cease.
  - (5) Amounts credited to a participating DROP member's DROP account ~~will~~shall not constitute annual additions under ~~26 U.S.C. § 415~~Section 415 of the Internal Revenue Code.
  - (6) A participating DROP member's DROP account ~~will~~shall not be an account that is separate and distinct from the assets of the System; a participating DROP member's DROP account balance ~~will~~shall remain part of the assets of the System.
- (e) Cessation of County employment.
- (1) At the conclusion of a participating DROP member's DROP period, the member's County employment ~~will~~shall automatically cease. The participating DROP member shall then begin to receive normal service retirement ~~benefits and~~ allowances and benefits computed based upon his or her average final compensation at the time of the commencement of the DROP period and his or her creditable service at the time of the commencement of the DROP period, plus cost ~~of~~ living increases provided to retirees and any other benefit improvements that may have been granted to retirees during the participating DROP member's DROP period. At least sixty (60) days prior to the conclusion of a participating DROP member's DROP period, the member ~~must~~shall make one of the following elections concerning payment of his or her DROP account balance:
    - (A) The member may receive payment of his or her DROP account balance as a lump sum.
    - (B) The member may elect to roll over his or her DROP account balance into an "eligible retirement plan," as defined in Section 3-3-55(b)(2).
    - (C) The member may elect to receive payment of a portion of his or her DROP account balance and roll over the remaining portion into a qualified retirement plan, such as an IRA. If the member elects this method of receiving his or her DROP account balance, he or she must specify, in writing, the specific amount to be paid as a lump sum and the specific amount to be rolled over.
    - (D) The member may elect to use his or her DROP account balance to increase his or her monthly retirement benefits and allowances. The amount of the increase ~~will~~shall be determined based on the actuarial equivalent of the member's DROP account balance.
    - (E) The member may divide his or her DROP account balance in half, and may then elect to use ~~50~~fifty percent (50%) of his or her DROP account balance to increase his or her monthly retirement ~~benefits and~~ allowances and benefits, and to receive the remainder in any manner listed in ~~paragraphs~~Subparagraphs (A), (B) and (C) above.
- In the event that the participating DROP member does not make the election required by this ~~section~~Subsection, the member ~~will~~shall receive payment of his or her DROP account balance as a lump sum.
- (2) A participating DROP member may terminate his or her County employment at any time, in which case the effective date of the member's termination of his or her County employment shall be treated as the end of the DROP period for ~~the provisions~~all purposes of this ~~section~~Section.
  - (3) In the event that the employment of a participating DROP member is terminated by the County during the DROP period for any reason, the effective date of the member's separation from County service shall be treated as the end of the DROP period for all purposes of this Section.
- (f) Death or disability during DROP period.
- (1)
    - (A) If a participating DROP member dies during the DROP period, the participating DROP member's designated beneficiary on record with the System shall receive payment of the member's DROP account balance and the member's accumulated contributions; if there

is no designated beneficiary on record with the System, payment of these amounts shall be made to the participating DROP member's estate. In the event that the participating DROP member has elected a joint and last survivor option pursuant to the terms of [§Section 3-3-33\(c\)](#), the participating DROP member's surviving spouse ~~will~~[shall](#) receive payment of the participating DROP member's DROP account balance and ~~will~~[shall](#) begin to receive ~~benefits and~~ allowances [and benefits](#) pursuant to the joint and last survivor option election of the participating DROP member.

- (B) If a participating DROP member dies during the DROP period, and the participating DROP member's death is a service-connected accidental death as set forth in [§Section 3-3-38](#), the member's beneficiary shall receive the benefits provided for in [§Section 3-3-38\(a\)\(1\)](#); if there is no designated beneficiary on record with the System, payment of these amounts shall be to the member's estate. In the event that the participating DROP member has elected a joint and last survivor option pursuant to the terms of [§Section 3-3-33\(c\)](#), the participating DROP member's surviving spouse ~~will~~[shall](#) receive the benefits provided for in [§Section 3-3-38\(a\)\(1\)\(B\)](#) and the participating DROP member's DROP account balance, and ~~will~~[shall](#) begin to receive ~~benefits and~~ allowances [and benefits](#) pursuant to the joint and last survivor election of the participating DROP member.
- (2) If a participating DROP member becomes disabled during the DROP period, the participating DROP member ~~will~~[shall](#) receive:
  - (A) In the case that a participating DROP member suffers a disability that would be considered an ordinary disability as defined in [§Section 3-3-35](#), the effective date of the member's disability ~~will~~[shall](#) be treated as the end of the participating DROP member's DROP period.
  - (B) In the case that a participating DROP member suffers a service-connected disability as set forth in [§Section 3-3-36](#) or a severe service-connected disability as set forth in [§Section 3-3-37.2](#), the participating DROP member may elect either (i) to receive the service-connected disability retirement ~~benefits and~~ allowances [and benefits](#) or the severe service-connected disability retirement ~~benefits and~~ allowances [and benefits](#) to which he or she would otherwise be entitled or (ii) to receive the normal service retirement benefits and allowances to which he or she would be entitled plus his or her DROP account balance. An election to receive service-connected disability retirement ~~benefits and~~ allowances [and benefits](#) or severe service-connected disability retirement benefits shall constitute a waiver of the member's right to receive any amounts credited to his or her DROP account balance.
- (g) Execution of documents and adoption of rules and regulations. The County Executive is authorized to execute all documents necessary or appropriate to operate the DROP including, but not limited to, the establishment of a trust within which the participating DROP members' DROP accounts shall be held and administered. The Board of Trustees is also authorized to adopt rules and regulations governing the DROP. Any documents executed by the County Executive shall be approved for form by the County Attorney prior to execution. (36-03-3; 41-08-3; 27-10-3; 01-11-3; 27-12-3.)

Section 3-3-58. - Increased retirement allowance for certain retired members.

- (a) For the purposes of this ~~section~~[Section](#) only, the following words and phrases shall be defined as ~~set forth herein~~[follows](#):
  - (1) *Retired member* shall mean a member of ~~this~~[the](#) System whose effective date of ~~his or her~~ retirement was on or before March 18, 2002.
  - (2) *Retirement allowance* shall mean a normal [service](#) retirement allowance, an early [service](#) retirement allowance, an allowance to a surviving spouse pursuant to the joint and last survivor option ~~set forth in § 3-3-33(c)~~, or a spouse retirement allowance ~~pursuant to § 3-3-44(a)~~.
  - (3) *Spouse receiving a spouse allowance* shall mean a member's surviving spouse who was, on or before March 18, 2002, entitled to receive a spouse retirement allowance ~~pursuant to § 3-3-44(a)~~.



- (4) *Base annual retirement allowance* shall mean the initial calculation of a member's retirement allowance, a surviving spouse's allowance pursuant to the joint and last survivor option ~~pursuant to § 3-3-33(c)~~, or a spouse's annual retirement allowance ~~pursuant to § 3-3-44(a)~~, without regard to any deductions for withholding or other benefit elections or adjustments under [§Section](#) 3-3-8.
- (A) For Plan A members ~~retired~~[taking normal service retirement](#) pursuant to [§Section](#) 3-3-32(a) ~~(normal retirement)~~, this ~~shall be~~[is](#) the allowance calculated pursuant to ~~the terms of §Sections~~ 3-3-33(a)(1)(A) and (B) as in effect on the effective date of their retirement;
  - (B) For Plan B members ~~retired~~[taking normal service retirement](#) pursuant to [§Section](#) 3-3-32(a) ~~(normal retirement)~~, this ~~shall be~~[is](#) the allowance calculated pursuant to ~~the terms of §Section~~ 3-3-33(a)(1)(A), (B) and (C) as in effect on the effective date of their retirement;
  - (C) For Plan C members ~~retired~~[taking normal service retirement](#) pursuant to [§Section](#) 3-3-32(a) ~~(normal retirement)~~, this ~~shall be~~[is](#) the allowance calculated pursuant to ~~the terms of §Section~~ 3-3-33(a)(1)(D) as in effect on the effective date of their retirement;
  - (D) For Plan D members ~~retired~~[taking normal service retirement](#) pursuant to [§Section](#) 3-3-32(a) ~~(normal retirement)~~, this ~~shall be~~[is](#) the allowance calculated pursuant to ~~the terms of §Section~~ 3-3-33(a)(1)(D) and (E) (Plan D members) as in effect on the effective date of their retirement;
  - (E) For Plan A and C members ~~retired~~[taking early service retirement](#) pursuant to [§Section](#) 3-3-32(b) ~~(early retirement)~~ whose age plus creditable service as of the effective date of their retirement was less than [seventy-five \(75\) years](#), ~~this is~~[this is](#) the allowance calculated pursuant to ~~the terms of §Section~~ 3-3-33(b)(1) as in effect on the effective date of their retirement;
  - (F) For Plan B and D members and for Plan A and C members [taking early service retirement pursuant to Section 3-3-32\(b\)](#) whose age plus creditable service was greater than or equal to [seventy-five \(75\) years](#) as of the effective date of their retirement ~~retired pursuant to § 3-3-32(b) (early retirement)~~, ~~this is~~[this is](#) the allowance calculated pursuant to ~~the terms of §Section~~ 3-3-33(b)(2) as in effect on the effective date of their retirement; or
  - (G) For a surviving spouse receiving an allowance pursuant to the joint and last survivor option, ~~this is~~[this is](#) the allowance calculated pursuant to ~~the terms of §Section~~ 3-3-33(c) as in effect on the effective date of the member's retirement; or
  - (H) For a spouse receiving a spouse allowance, ~~this is~~[this is](#) the allowance calculated pursuant to ~~the terms of §Section~~ 3-3-44(a) as in effect on the date of the commencement of payment of the spouse allowance.
- (5) *Adjusted base annual retirement allowance* shall mean the base annual retirement allowance as set forth in ~~subparagraph 4 above~~[Subparagraph 4 of this Subsection](#) as increased by any cost-of-living adjustments applied to the base annual retirement allowance from the effective date of the retired member's retirement or of the commencement of the receipt of a spouse allowance through December 31, 2003.
- (b) Effective January 1, 2004, the adjusted base annual retirement allowance of each retired member or spouse receiving a retirement allowance shall be increased as follows:
- (1) For Plan A members, by ~~23~~[twenty-three](#) percent ~~(23%)~~;
  - (2) For Plan B members, by ~~15~~[fifteen](#) percent ~~(15%)~~;
  - (3) For Plan C members, by five percent ~~(5%)~~;
  - (4) For Plan D members, by five percent ~~(5%)~~;
  - (5) For spouses receiving spouse allowances pursuant to [§Section](#) 3-3-44(a), by ten percent ~~(10%)~~; or
  - (6) For surviving spouses receiving allowances pursuant to the joint and last survivor option set forth in [§Section](#) 3-3-33(c), by ten percent ~~(10%)~~.

- (c) No increased retirement allowance calculated pursuant to ~~the terms of~~ this Section shall violate the limitations on annual retirement allowances set forth in §Section 3-3-53.
- (d) For those persons eligible to receive the increased retirement allowance pursuant to this Section, cost- of-living adjustments pursuant to §Section 3-3-45 and made after January 1, 2004, ~~will~~shall be calculated based upon the increased retirement allowance set forth in this Section. (43-03-3.)

Division 9. - Benefit Restoration Plan.

Section 3-3-59. - Benefit Restoration Plan.

- (a) There is hereby established a Benefit Restoration Plan for the System.
- (b) Purpose and intent; rule of construction.
  - (1) In establishing this Benefit Restoration Plan, the Board of Supervisors intends to establish and maintain a "qualified governmental excess benefit arrangement," as defined and authorized by the ~~federal~~Section 415(m) of the Internal Revenue Code ~~Section 415(m), 26 U. S. C. Section 415(m),~~ as is permitted by ~~Va. Code Ann. Section 51.1-1302, 1302 of the Code of Virginia.~~ The purpose of this Benefit Restoration Plan is to restore, through a non-qualified arrangement, the benefits lost by the application of the limitation on annual benefits under Section 415(b) of the Internal Revenue Code ~~Section 415(b)~~ as applicable to governmental plans. This Benefit Restoration Plan shall exist in addition to all other retirement, pension, or other benefits available to ~~Participants~~participants, including the benefits established by ~~this~~the System.
  - (2) This ~~section~~Section shall be construed to ensure compliance with ~~the provisions of~~ federal and state law, and any regulations promulgated thereunder, governing such qualified governmental excess benefit arrangements, including, but not limited to Section 415(m) of the Internal Revenue Code ~~Section 415(m)~~ and ~~Va. Code Ann. Sections 51.1-1302, 51.1-1303, and 51.1-1304, 1304 of the Code of Virginia.~~ as in effect at the time of the adoption of this ~~section~~Section and as subsequently amended.
- (c) Definitions.
  - (1) ~~Administrator or Plan Administrator~~ shall mean the Board ~~of Trustees of the Uniformed Retirement System,~~ which is responsible for the general administration and operation of the Benefit Restoration Plan and for making effective the provisions of this Section. Under the oversight of the Board ~~of Trustees,~~ the Executive Director ~~of the Retirement Administration Agency~~ shall be responsible for the day to day operation and administration of the Benefit Restoration Plan.
  - (2) ~~Beneficiary~~ shall mean the person or persons entitled under ~~the provisions of~~ this Article ~~governing this System~~ to receive any benefits payable after the ~~Participant~~participant's death.
  - (3) ~~Board~~Benefit Restoration Plan or Plan shall mean the ~~Board of Trustees of the Uniformed Retirement~~Benefit Restoration Plan for the System established ~~underby~~ this ArticleSection.
  - (4) ~~Internal Revenue Code means the federal Internal Revenue Code, as the same may be amended from time to time, and, to the extent not inconsistent therewith, regulations issued there under. (5) ———Effective Date. The effective~~date shall mean the date of this ~~section is its date of~~Section's adoption [June 5, 2006].
  - (~~6~~5) ~~Eligible Member~~member shall mean a retired member of the ~~Uniformed Retirement System and~~ whose benefits thereunder are reduced by the application of the limitations on annual benefits under Section 415(b) of the Internal Revenue Code ~~Section 415(b)~~ as applicable to governmental plans.
  - (~~7~~) ~~Member shall mean a member of the Uniformed Retirement System established under this Article.~~

- ~~(8) Employer shall mean an employer as defined under the Uniformed Retirement System established under this Article. (96)~~ *Enabling statute* shall mean Chapter 13 of Title 51.1 of the Code of Virginia ~~Code (1950)~~, as amended.
- ~~(407)~~ *Grantor Trust*trust shall mean the trust fund described in ~~sub-section~~Subsection (i)(3) of this Section and established and maintained for the Benefit Restoration Plan.
- ~~(448)~~ *Participant* shall mean an ~~Eligible Member~~eligible member qualified to participate in the Benefit Restoration Plan.
- ~~(12) Benefit Restoration Plan or Plan shall mean the Benefit Restoration Plan for the System established by this Section. (139)~~ *Plan Sponsor* shall mean the Board of Supervisors ~~of Fairfax County, Virginia.~~
- ~~(4410)~~ *Plan Year* shall mean the twelve (12-) month period beginning on ~~the first day of July-~~1.
- ~~(4511)~~ *Restoration Death—Benefit*death benefit shall mean the benefit due the ~~Beneficiary~~beneficiary of a ~~Participant~~participant under the Plan as determined under this Section.
- ~~(4612)~~ *Restoration Retirement—Benefit*retirement benefit shall mean the benefit due a ~~Participant~~participant or his or her ~~Beneficiary~~beneficiary under the Benefit Restoration Plan determined under this Section.
- ~~(17) Retirement System or System shall mean the Uniformed Retirement System established under this Article.~~
- (d) Eligibility and Participation
- (1) Eligibility and ~~Date~~date of ~~Participation~~participation. Each ~~Eligible Member~~eligible member shall be a ~~Participant~~participant in ~~this~~the Benefit Restoration Plan commencing with the date he or she first becomes, or again becomes, an ~~Eligible Member~~eligible member.
  - (2) Length of ~~Participation~~participation. Each ~~Eligible Member~~eligible member who becomes a ~~Participant~~participant shall be or remain a ~~Participant~~participant for so long as he or she is entitled to future benefits under the terms of ~~this~~the Benefit Restoration Plan.
- (e) Restoration ~~Retirement Benefit (1)~~retirement benefit. Subject to the terms and conditions set forth in this Section, a ~~Participant~~participant who retires or is retired under the System and who is entitled to the payment of benefits under the System shall be entitled to a ~~Restoration Retirement Benefit~~restoration retirement benefit, generally expressed as a benefit payable monthly for the life of the ~~Participant~~participant and commencing at the applicable time provided under this Article, equal to the excess, if any, of:
- ~~(i)~~ The amount of the ~~Participant~~participant's retirement allowance under the ~~Retirement~~ System, determined without regard to the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, over
  - ~~(ii)~~ The amount of the ~~Participant~~participant's retirement allowance under the ~~Retirement~~ System.
- To the extent that the ~~Participant~~participant's retirement allowance payable under the ~~Retirement~~ System is increased at any time due to increases in limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, whether by statute, regulation, actions of the ~~Secretary of the U. S. Treasury~~ Secretary or his or her delegate or otherwise, the ~~Participant's Restoration Retirement Benefit~~participant's restoration retirement benefit shall be reduced correspondingly.
- (f) Death Benefit.
- (1) Death after ~~Benefit Commencement~~benefit commencement. If a ~~Participant~~participant dies after his or her ~~Restoration Retirement Benefit~~restoration retirement benefit commences to be paid, the only benefits payable under the Benefit Restoration Plan to his or her ~~Beneficiary~~beneficiary after his or her death shall be those, if any, provided under the form of payment being made to him or her at his or her death.

- (2) Death before ~~Benefit Commencement~~benefit commencement. If a ~~Participant~~participant dies before his or her ~~Restoration Retirement Benefit~~restoration retirement benefit commences to be paid, the only benefit payable under the Benefit Restoration Plan with respect to him or her shall be the ~~Restoration Death Benefit~~restoration death benefit, if any, provided in ~~sub-section~~Subsection (f)(3) ~~of this Section~~.
- (3) Restoration ~~Death Benefit~~death benefit. Subject to the terms and conditions set forth herein, if a ~~Participant~~participant dies on or after the ~~Effective Date~~effective date and before his or her ~~Restoration Retirement Benefit~~restoration retirement benefit commences to be paid, his or her ~~Beneficiary~~beneficiary shall be entitled to a ~~Restoration Death Benefit~~restoration death benefit as follows:
  - (A) If his or her ~~Beneficiary~~beneficiary is entitled to receive any death benefit under the ~~Retirement~~ System, such ~~Beneficiary~~beneficiary shall be entitled to receive as a ~~Restoration Death Benefit~~restoration death benefit under the Benefit Restoration Plan an amount equal to the excess, if any, of:
    - (i) The amount of such death benefit under the ~~Retirement~~ System, determined without regard to the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, over
    - (ii) The actual amount of such death benefit under the ~~Retirement~~ System.

To the extent that the ~~Participant~~participant's accrued benefit or any death benefit payable under the ~~Retirement~~ System is increased at any time due to increases in the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, whether by statute, ~~regulations~~regulation, actions of the ~~U.S.~~ Secretary of the Treasury or his or her delegate or otherwise, the ~~Participant's Restoration Death Benefit~~participant's restoration death benefit shall be reduced correspondingly.

- (g) Vesting. ~~(1) ——— Vesting. A Participant's Restoration Retirement Benefit or Restoration Death Benefit~~A participant's restoration retirement benefit or restoration death benefit, as the case may be, shall be vested at the time of his or her retirement under the ~~Retirement~~ System or death, but only to the extent, and determined in the manner, that such ~~Participant~~participant has a vested and non-forfeitable right to his or her retirement allowance under the ~~Retirement~~ System.
- (h) Payment of Benefits.
  - (1) Time and ~~Manner~~manner for ~~Payment~~payment of ~~Benefits. A Participant's Restoration Retirement Benefit, or the Restoration Death Benefit~~benefits. A participant's restoration retirement benefit, or the restoration death benefit, shall be payable at the same time and in the same manner as the ~~Participant~~participant's retirement allowance or comparable death benefit (other than his or her accumulated contributions or contribution refund death benefit) is paid under the ~~Retirement~~ System, whether as elected by the ~~Participant~~participant or otherwise payable. For a member who is receiving a retirement allowance under the System on the ~~Effective Date~~effective date, and who would immediately be an ~~Eligible Member~~eligible member upon the ~~Effective Date~~effective date, such Member shall immediately commence receiving a ~~Restoration Retirement Benefit~~restoration retirement benefit on a prospective basis.
  - (2) Discretionary ~~Use~~use of ~~Other Methods of Payment~~other methods of payment. In the sole discretion of the Administrator, monthly payment amounts of less than \$100.00, or such amount as the Administrator may from time to time determine, may be paid on an annual or semi-annual basis, in arrears and without interest.
  - (3) Benefit ~~Determination~~determination and ~~Payment Procedure~~payment procedure. The Administrator shall make all determinations concerning eligibility for benefits under the Benefit Restoration Plan, the time or terms of payment, and the form or manner of payment to the ~~Participant~~participant (or the ~~Participant's Beneficiary~~participant's beneficiary in the event of the death of the ~~Participant~~participant). The Administrator shall promptly notify the ~~Employer~~employer and, where payments are to be made from a ~~Grantor Trust~~grantor trust, the trustee thereof, of each such determination that benefit payments are due and provide to the

~~Employer~~employer or trustee such other information necessary to allow the ~~Employer~~employer or trustee to carry out said determination, whereupon the ~~Employer~~employer or trustee shall pay such benefits in accordance with the Administrator's determination.

- (4) Payments to ~~Minors~~minors and ~~Incompetents. If a Participant or Beneficiary~~incompetents. If a ~~participant or beneficiary~~entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits ~~will~~shall be paid to such person as the Administrator may designate for the benefit of such ~~Participant or Beneficiary~~participant or beneficiary. Such payments shall be considered a payment to such ~~Participant or Beneficiary~~participant or beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Benefit Restoration Plan.
  - (5) Distribution of ~~Benefit When Distributee Cannot Be Located~~benefit when distributee cannot be located. The Administrator shall make all reasonable attempts to determine the identity and/or whereabouts of a ~~Participant~~participant or his or her ~~Beneficiary~~beneficiary entitled to benefits under the Benefit Restoration Plan, including the mailing by certified mail of a notice to the last known address shown on the ~~Employer~~employer's or the Administrator's records. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no such claim made for such benefits, the ~~Employer~~employer shall continue to hold the benefit due such person, subject to any applicable statute of escheats.
- (i) Funding.
- (1) The undertaking to pay the benefits hereunder shall be unfunded obligations payable solely from the general assets of the ~~Employer~~employer and subject to the claims of the ~~Employer~~employer's creditors.
  - (2) Except as provided in a ~~Grantor Trust~~grantor trust established as permitted in ~~sub-section~~Subsection (i)(3) of this Section, nothing contained in the Benefit Restoration Plan and no action taken pursuant to ~~the provisions of~~ this Section shall create or be construed to create a trust of any kind of a fiduciary relationship between the ~~Employer~~employer and the ~~Participant~~participant or his or her ~~Beneficiary~~beneficiary or any other person or to give any ~~Participant or Beneficiary~~participant or beneficiary any right, title, or interest in any specific asset or assets of the ~~Employer~~employer. To the extent that any person acquires a right to receive payments from the ~~Employer~~employer under the Benefit Restoration Plan, such rights shall be no greater than the right of any unsecured general creditor of the ~~Employer~~employer.
  - (3) Use of ~~Grantor Trust Permitted~~grantor trust permitted. Notwithstanding any provision of this Section to the contrary, the Benefit Restoration Plan Sponsor may in its sole discretion elect to establish and fund a ~~Grantor Trust~~grantor trust for the purpose of providing benefits under the Benefit Restoration Plan.
- (j) Plan Administrator.
- (1) The Plan Administrator ~~has~~shall have full and complete authority and discretion to control and manage the operation of and shall decide all matters under the Benefit Restoration Plan pursuant to this Section and the ~~Enabling Statute~~enabling statute. The Administrator ~~has~~shall have any and all powers as may be necessary or advisable to discharge its duties under the Benefit Restoration Plan including the power and authority to interpret the terms of the Benefit Restoration Plan.
  - (2) The Plan Administrator ~~is~~shall be responsible for performing the duties required for the operation of the Benefit Restoration Plan, and ~~is~~shall be responsible for supervising the performance of any other persons who may assist in the performance of the Plan Administrator's responsibilities under this Section and the ~~Enabling Statute~~enabling statute.
  - (3) To enable the Plan Administrator to perform its responsibilities, ~~Employer~~employer(s) shall promptly provide to the Plan Administrator complete and accurate information on any matter that is required by the Administrator in order to make any decision or determination under the Benefit

Restoration Plan. The Plan Administrator shall rely upon this information supplied by the ~~Employer~~employer, and shall have no duty or responsibility to verify this information.

- (4) Except as prohibited by law or by this Section, the Plan Administrator may delegate any of its duties to the Executive Director ~~of the Retirement Administration Agency~~. The Plan Administrator may contract with any person to provide services to assist in the administration of the Benefit Restoration Plan. The Plan Administrator ~~must~~shall make such contracts in compliance with all applicable ~~State~~state and local laws and regulations. Any person other than the Plan Administrator who performs services regarding the Benefit Restoration Plan is subject to the supervision and direction of the Plan Administrator, and does not have the authority to control the operation of the Plan.
- (k) Termination and ~~Amendment~~amendment of ~~the~~ Benefit Restoration Plan.
  - (1) Termination ~~of the Benefit Restoration Plan~~. The Board of Supervisors ~~of the County of Fairfax, Virginia,~~ hereby reserves the right to terminate ~~this~~the Benefit Restoration Plan at any time; <sup>7</sup> provided, that no such termination shall reduce, suspend, or terminate the ~~Restoration Retirement Benefit or Restoration Death Benefit~~restoration retirement benefit or restoration death benefit otherwise payable to a ~~Participant or Beneficiary~~participant or beneficiary hereunder as of the date of such termination.
  - (2) Amendment ~~of the Benefit Restoration Plan~~. The Board of Supervisors ~~of the County of Fairfax, Virginia,~~ hereby reserves the right to amend this Benefit Restoration Plan at any time; <sup>7</sup> provided, that no such amendment shall reduce, suspend, or terminate the ~~Restoration Retirement Benefit or Restoration Death Benefit~~restoration retirement benefit or restoration death benefit otherwise payable to a ~~Participant or Beneficiary~~participant or beneficiary hereunder as of the date of such ~~termination~~amendment.
- (l) ~~Miscellaneous. (1)~~ Non-assignability.

The interests of each ~~Participant~~participant hereunder the Benefit Restoration Plan are not subject to the claims of the ~~Participant~~participant's creditors; and neither the ~~Participant~~participant nor his ~~Beneficiary or her beneficiary~~, shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Benefit Restoration Plan, which payments and interest are expressly declared to be non-assignable and non-transferable. ~~(2)~~ —Notwithstanding the ~~preceding sub-section~~foregoing, the Plan Administrator shall honor any process for a debt to the ~~Employer~~employer who has employed the ~~Participant~~participant and any administrative actions pursuant to ~~Va. Code Ann. Sections~~Section 63.2-~~1900, 1900~~ et seq. of the Code of Virginia, or any court process to enforce a child or spousal support obligation, in the manner as described in Section 3-3-7 ~~of this Article~~ mutatis mutandi. Restoration ~~Retirement Benefits and/or Restoration Death Benefits~~retirement benefits and/or restoration death benefits created under this Section which are deemed to be marital property pursuant to ~~Va. Code Ann. Sections~~Section 20-89.1 et seq. of the Code of Virginia may be divided or transferred by the court by direct assignment to a spouse or former spouse pursuant to ~~Va. Code Ann. Section 20-107.3,~~107.3 of the Code of Virginia. Under no circumstances may a payment under this ~~sub-section~~Subsection take place before the ~~Participant~~participant's benefit under the ~~Retirement~~ System is actually paid. (12-06-3.)



## ARTICLE 7. - Fairfax County Police Officers Retirement System.

## Division 1. - Generally.

## Section 3-7-1. - Fairfax County Police Officers Retirement System established.

- (a) Under the authority granted by Chapter 303, 1944 Acts of the Assembly, as amended, the Police Pension and Retirement System, established previously under the authority of Chapter 303, 1944 Acts of the Assembly, is hereby continued and is adopted and enacted by ordinance, as hereinafter set forth, and is to be known henceforth as the "Fairfax County Police Officers Retirement System."
- (b) The previously established Policemen's Pension and Retirement Board is hereby continued and ~~will~~shall be referred to as the "Board of Trustees of the Fairfax County Police Officers Retirement System." Members of the ~~Policemen's Pension and Retirement~~ Board of Trustees in office on the effective date of this Article ~~(June 22, 1981)~~ shall continue in office as trustees until the expiration of their present terms and may be reappointed in accordance with the provisions of this Article.
- (c) The Fairfax County Police Officers Retirement System is intended to satisfy the requirements of Sections 401(a) and 414(d) of the Internal Revenue Code ~~§§ 401(a) and 414(d) requirements~~ for qualified governmental pension plans. (20-81-3; 52-13-3.)

## Section 3-7-2. - Definitions.

~~The following words and phrases shall have the meanings respectively provided by this Section Unless provided otherwise in another Section, the following definitions shall apply to this Article:~~

(a) Accrued sick leave credit shall mean:

- (1) For employees whose ~~county~~County employment commenced by reporting for work before January 1, 2013 (members of Plan A), ~~accrued sick leave credit shall mean~~ the credit allowed a member at a rate of one (1) month for each one-hundred-seventy-two (172) hours of accrued unused sick leave, and pro rata credit shall be allowed for each fraction thereof.
- (2) For employees whose ~~county~~County employment commenced by reporting for work on or after January 1, 2013 (members of Plan B), ~~accrued sick leave credit shall mean~~ the credit allowed a member with more than five (5) years of service for purposes of determining retirement eligibility. Credit shall be allowed at the rate of one (1) month for every one-hundred-seventy-two (172) hours of accrued unused sick leave, and pro rata credit shall be allowed for each fraction thereof; however, for employees whose ~~county~~County employment commenced by reporting to work on or after January 1, 2013, notwithstanding the amount of the employee's accrued sick leave balance, the maximum amount of accrued sick leave credit that may be used for determining retirement eligibility and for computing the member's retirement ~~benefits and~~ allowances and benefits shall be the employee's accrued sick leave balance or two-thousand-eighty (2,080) hours, whichever is less.
- (b) *Actuarial equivalent* shall mean a benefit of equal value when computed upon the basis of such actuarial tables as are adopted by the Board ~~of Trustees of the System~~.
- (c) *Average final compensation* shall mean the annual creditable compensation of a member during the thirty-six (36) consecutive months (seventy-eight (78) consecutive pay periods) in which the member received his or her highest creditable compensation.
- (1) In determining average final compensation for members who retire after July 1, 1988, the member's accrued unused sick leave at the time of retirement may, at the option of the member, be substituted for an equivalent period of creditable service as if the member had continued to work at his or her final salary during the period of his or her accrued unused sick leave; provided, ~~however,~~ that in determining the average final compensation for members who became members of ~~this~~the System on or after January 1, 2013 ~~(i.e., members of Plan B)~~, no more than

two-thousand-eighty (2,080) hours of the member's accrued unused sick leave may be used for this purpose.

- (1) ~~Rule applicable to members ordered or called to active duty with the armed forces of the United States on or after August 2, 1990, with or without their consent, other than for training at the request of the member.~~ 2) If a member ordered or called to active duty with the armed forces of the United States on or after August 2, 1990, with or without his or her consent, other than for training at the request of the member, is entitled to service credit as a result of such military service pursuant to Section 3-7-23(d) and he or she otherwise would have no creditable compensation attributable to some portion or all of such period of service, his or her average final compensation shall be calculated as if he or she had continued to receive the salary, including ~~pickup~~pick-up contributions, approved and established for his or her position by the County ~~Pay and~~ Compensation Plan during the period of military service for which he or she is receiving service credit. A member shall be entitled to the benefit of the application of this rule for up to a cumulative total of four (4) years of military service commencing on or after August 2, 1990. The Board ~~is authorized and directed to~~shall make any and all necessary retroactive adjustments to members' allowances as a result of this rule.
- (3) Notwithstanding the foregoing, whenever the ~~Personnel~~Director of the Department of Human Resources, at the request of the Board, the member, or the member's beneficiary determines that the member's receipt of a merit increment was delayed as a result of either or both of the amendments to Section 4.3-2 of the Personnel Regulations, effective July 13, 1991, and July 11, 1992, and that the member would otherwise have been entitled to such merit increment under the Personnel Regulations, based upon ~~his or her~~the Human Resources Director's review of the member's personnel and payroll records, the Board shall calculate the member's average final compensation as if the member had received the merit increment at the time he or she would have but for the aforesaid amendments to Section 4.3-2 of the Personnel Regulations. This ~~amendment~~Subparagraph shall apply to all applications for allowances and benefits filed with the ~~respective Boards of Trustees~~Board on or after July 13, 1991. The ~~respective Boards of Trustees are hereby authorized and directed to~~Board shall make any necessary retroactive adjustments to allowances and benefits.
- (24) Periods of leave without pay under the federal Family and Medical Leave Act of 1993 (FMLA) shall be disregarded in determining periods of consecutive months or ~~payroll~~pay periods in calculating average final compensation.
- (d) *Average salary*, as used in Section 3-7-34, shall mean the current salary of the position the member was in at the time he or she was disabled.
- (e) *Beneficiary* shall mean any person, other than a member, entitled to receive benefits as provided by the System. The Board shall provide a member with a form on which to designate in writing one or more beneficiaries of the member's benefits upon the member's death. The Board shall maintain any such written designation on file. A designated beneficiary may be changed from time to time by written notice by the member filed with the Board.
- (f) *Board* shall mean the Board of Trustees of the System, as ~~established~~provided in this Article.
- (g) *Creditable compensation* shall mean payment of salary including ~~pickup~~pick-up contributions, roll call and holiday pay but excluding performance bonuses. Effective for plan years after December 31, 1988, compensation in excess of \$~~200,000.00~~ (200,000.00), as indexed under Section 415(d) of the Internal Revenue Code), shall be disregarded. Notwithstanding the foregoing, effective for members hired on or after July 1, 1996, compensation in excess of the limit set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded. In determining the compensation of an employee under this ~~plan section~~definition, the rules of Section 415(c)(3) of the Internal Revenue Code shall apply. Effective for plan years on or after January 1, 2001 an employee's compensation shall include amounts not includible in gross income by reason of Section 132(f)(4) of the Internal Revenue Code.



- (h) *Creditable service* shall mean the total of membership service credit ~~as an active member of the Fairfax County Police Department~~, plus portability service credit purchased pursuant to ~~section~~Section 3-7-23.1.
- (i) DROP shall mean the Deferred Retirement Option Program, as provided in Section 3-7-52.
- (j) Employee shall mean any law enforcement officer within the ~~police department~~Fairfax County Police Department, whose compensation is fully paid by the County, and excluding any person as defined by ~~Article 3~~, Section 3-3-1(a)(9), of the Code of the County of Fairfax.
- (j) Employer shall mean the Chief of Police for the Fairfax County Police Department or an authority in the County having power to appoint police officers paid directly or indirectly by the County and/or the Board of Trustees of the System.
- (k) Executive Director shall mean the Executive Director of the Fairfax County Retirement Administration Agency.
- (m) *Handicapped child* shall mean natural or legally adopted member's progeny who has demonstrated to the Board by medical evidence acceptable to the Board, in its sole discretion, to be permanently mentally incompetent or permanently physically handicapped, unless and until a determination has been made by the Board that such progeny no longer is permanently mentally incompetent or permanently physically handicapped in accordance with Section 3-7-41.
- (n) Internal Revenue Code shall mean the federal income tax statutes, as they may be amended or superseded from time to time in the future.
- (o) *Member* shall mean a full-time employee, or a part-time employee, provided the Board first determines that it desires to receive a part-time employee into the ~~system~~System, or a former employee entitled to benefits under the System.
- (p) *Membership service credit* shall mean credit for service ~~to this~~while a member of the System.
- (n) ~~Picked-g)~~ Partial disability shall mean the inability of the member to perform some part of the duties of a police officer, such as in administrative or desk assignments.
- (r) Pick-up contributions shall mean a member's regular ~~member's contributions~~contribution to the System which ~~are~~is picked up, through a salary reduction ~~in salary~~, by the County from ~~active members~~the member's compensation for service rendered on or after December 22, 1984.
- (es) ~~Plan A is set forth in~~shall mean the provisions of this Article as applicable to all employees whose ~~county~~County employment commenced by reporting for work before January 1, 2013.
- (pt) ~~Plan B is set forth in~~shall mean the provisions of this Article as applicable to all employees whose ~~county~~County employment commenced by reporting for work on or after January 1, 2013; ~~the sole difference between Plans A and B is found in those provisions that address the limitations on the use of accrued sick leave credits and accrued unused sick leave for the purposes of determining retirement eligibility and for computing the member's retirement benefits and allowances.~~2013.
- (qu) *Retirement allowance* shall mean the retirement payments to which a member is entitled ~~to members~~ as provided in this Article.
- (fv) *Salary* shall mean the compensation, including ~~pick up~~pick-up contributions, established for each position as approved in the County ~~Pay and~~ Compensation Plan.
- (sw) *Service* shall mean service as an employee for which compensation is paid by the employer, but shall not include time spent on leave without pay.
- (tx) *System* shall mean the ~~"Fairfax County Police Officers Retirement System."~~ "When any part of this Article refers to multiple retirement systems, the Police Officers Retirement System shall be referred to as "this System," rather than "the System."

(y) Total disability shall mean the inability of a member to reasonably perform his or her duties as a police officer. (20-81-3; 5-85-3; 36-88-3; 27-90-3, § 5; 13-92-3; 43-92-3; 15-93-3; 37-94-3; 21-96-3; 14-00-3; 18-01-3; 8-03-3; 8-04-3; 28-12-3.)

Section 3-2-2.1. - Definitions elsewhere in County Code and in County Personnel Regulations.

Unless this Article provides otherwise, the definitions provided in Sections 1-1-2, 3-3-1, and 3-3-12 of the Code of the County of Fairfax, and Chapter 2 of the Fairfax County Personnel Regulations shall apply herein.

Section 3-7-3. - Duties of the employer.

The employer shall ~~maintain records as~~ keep all necessary ~~records~~ relating to the hiring and employment of members, and from time to time shall furnish such information ~~to assist~~ the Board ~~as it~~ may require in the discharge of its duties. Upon employment of a member, the employer shall inform the member of his or her duties and obligations in connection with the System as a condition of employment. (20-81-3.)

Section 3-7-4. - Consent to provisions of Article required for employment.

~~Upon~~ By and upon acceptance of employment with the employer, every member shall be deemed to consent and agree to any deductions or employer ~~pick up~~ pick-up of amounts from ~~this~~ his or her compensation, ~~as stated in~~ required by this Article, and to all other provisions thereof. (20-81-3; 5-85-3.)

Section 3-7-5. ~~- Fraud and false statements-~~ Protection against fraud.

In addition to any other provisions of law, any person who shall knowingly make any false statement, or ~~false~~ shall falsify or permit to be falsified, any record or records of the System in any attempt to defraud the System, shall be guilty of a ~~Class 1~~ misdemeanor, ~~and shall be punished accordingly.~~ (20-81-3.)

Section 3-7-6. - Benefits unassignable; non-attachable.

The right of any member to a retirement allowance, to the return of contributions, including picked ~~up~~ amounts, or any other right accrued or accruing to any ~~other~~ person under ~~the provisions of~~ this Article, and the funds created by this Article, shall be unassignable and shall not be subject to execution, garnishment, attachment, bankruptcy, insolvency, or any other process of law whatsoever except for administrative actions pursuant to ~~Chapter 13 (§ 63.1-249)~~ Section 63.2-1900 et seq.) of Title ~~63.1~~ of the Code of Virginia or any court process to enforce a child or child and spousal support obligation, and shall be unassignable except as specifically provided in this Article. However, retirement benefits and assets created under this Article which are deemed to be marital property pursuant to ~~Chapter 6 (§ Section 20-89.1 et seq.)~~ of Title ~~20~~ of the Code of Virginia may be divided or transferred by the court by direct assignment to a spouse or former spouse pursuant to Section 20-107.3 of the Code of Virginia, Section 20-107.3,  (5-85-3; 13-92-3; 1-93-3)

Section 3-7-7. ~~- Error in records; corrections and adjustment-~~ Errors resulting in over- or under-payment.

- (a) Should any change or error in the records or in the computation of a member's benefits result in any member or beneficiary receiving from the System more (overpayment) or less than ~~properly~~ he or she would have been entitled to had the records or computation been correct, the Board shall have the authority to correct such error and, as far as practicable, adjust the payments in such a manner that the actuarial equivalent of the benefit, to which such member or beneficiary was correctly entitled, shall be paid.
- (b) The Board is authorized to negotiate and compromise with a member with respect to any amounts which the Board determines have been paid to the member in excess of amounts to which the member is entitled. (20-81-3; 13-92-3.)

Section 3-7-8. ~~Amendment of Article.~~

- (a) The Board of Supervisors shall have the continuing right and power to amend or supplement this Article; ~~such at any time, which~~ right ~~and power~~ is hereby expressly reserved. ~~No~~ But no amendment shall be made inconsistent with the provisions of Section 51.1-821 of the Code of Virginia, ~~Section 51.1-821~~, as amended, and Chapter 303, 1944 Acts of Assembly, as amended.
- (b) No amendment, suspension or revocation, including termination or partial termination of the System, shall have the effect of diverting the trust fund of the System to purposes other than the exclusive benefit of the participating employees or their beneficiaries, until all liabilities for accrued benefits payable under the terms of the ~~plan~~ System shall have been fully satisfied. Upon termination of the System or a discontinuance of contributions to the System, each member's benefit accrued as of such date will be nonforfeitable. (20-81-3; 21-96-3; 52-13-3)

Division 2. - Board of Trustees.

Section 3-7-9. - Administration of System vested in Board of Trustees.

The general administration and the responsibility for the proper operation of the System, and for making effective the provisions of this Article, are hereby vested in the Board ~~of Trustees of the System~~. (20-81-3.)

Section 3-7-10. ~~Membership; term in~~ of office; election of officers.

- (a) The Board of Trustees of the System shall consist of ~~seven (7) trustees as follows~~ the following members:
- Director of the Department of Finance, who shall be the Treasurer of the Board, or his or her designee, sitting ex officio;
  - Three (3) trustees persons appointed by the Board of Supervisors; ~~two~~
  - Two (2) trustees who are persons currently employed by the Fairfax County Police Department as sworn police officers elected by the members of the System currently employed by the Fairfax County Police Department as sworn police officers; ~~one~~ and
  - One (1) trustee person who is retired from employment as a sworn police officer of Fairfax County elected by the retired members of the System; ~~and the Director of Finance, who shall be treasurer of the Board.~~
- (b) With the exception of the Director of the Department of Finance, ~~who shall be an ex-officio member of the Board~~, the term of office of ~~the~~ trustees shall be four (4) years. (20-81-3; 10-01-3.)

Section 3-7-11. - Vacancies in office.

Vacancies which occur in the office of ~~trustees~~ trustee of the System shall be filled for the unexpired term in the same manner as the office was previously filled. (20-81-3.)

Section 3-7-12. ~~Accountable to Board of Supervisors.~~

~~The Board of Trustees of the System shall be accountable to the Board of Supervisors. (20-81-3.)~~  
~~Section 3-7-13.~~ Compensation of trustees.

The ~~two~~ three (23) trustees appointed by the Board of Supervisors may receive compensation at the rate set by the Board of Supervisors. (20-81-3.)

Section 3-7-~~14.~~ 13. Election of officers.

The Board ~~of Trustees~~ shall elect one (1) member as president, one (1) as secretary, and may elect one (1) as vice-president. Such election shall occur at the first meeting of the Board in each calendar year. (20-81-3.)

Section 3-7-14. – Accountable to the Board of Supervisors.

The Board of Trustees of the System shall be accountable to the Board of Supervisors. (20-81-3.)

Section 3-7-15. - Functions of the Board.

The general powers and authorized duties of the Board ~~of Trustees~~, subject to the limitations of this Article, are as follows:

- (a) To adopt bylaws, rules and regulations, lawful and necessary for the proper conduct of its affairs.
- (b) To conduct hearings, make investigations, and determine the amount of awards or pensions to be paid any police officer or his or her beneficiaries.
- (c) To provide for the expense of such clerical, legal, medical, investment counsel, and other services as it deems necessary or proper.
- (d) To provide for, and require deductions from, the salaries of active and paid members of the ~~police department~~ Police Department, and to cause the amounts deducted to be paid into its treasury, for its use in the administration of the System.
- (e) To draw warrants, signed in its name and countersigned by its president, and its treasurer, for the payments of pensions and benefits hereunder, and of costs and expenses of administration.
- (f) To determine who shall be members of the System.
- (g) To submit to the Board of Supervisors annually an independent audit showing the fiscal transactions of the System for the preceding fiscal year, the amount of accumulated cash and securities of the System, and the last balance sheet indicating the financial condition of the System.
- (h) To cause an actuarial evaluation to be made of the System as of July 1, 1982, and at least once in each succeeding two-year period. The Board shall keep in convenient form such data as shall be necessary for an actuarial evaluation of the System and for checking the experience of the System.

(i) To review adverse decisions as provided by Section 3-7-45. (20-81-3; 8-82-3.)

Division 3. – Management of Funds.

Section 3-7-16. - Board trustee of funds; investment of same.

(a) The Board shall be the trustee of funds created by this Article and shall have full power to invest and ~~reinvest~~ re-invest such funds. Such investments and ~~reinvestments~~ re-investments shall be conducted with bona fide discretion and in accordance with the laws of the Commonwealth of Virginia, as such laws apply to fiduciaries investing such funds. The Board may upon the exercise of bona fide discretion employ investment counsel, who shall be subject to the same limitations herein provided for the Board. Subject to such limitations, the Board shall have the full power to hold, purchase, sell, assign, transfer or otherwise dispose of any of the securities or investments in which any of the funds created herein have been invested, as well as the proceeds of such investments and any money belonging to such funds. ~~No member of the Board~~

(b) ~~No trustee~~ shall be personally liable for losses suffered by the System on investments made under the authority of ~~an~~ and in compliance with this Section. (20-81-3.)

Section 3-7-17. - Treasurer fiscal officer of the Board.

The ~~treasurer~~ Treasurer of the Board shall be the custodian of all of its funds and securities, and may designate a fiduciary agent, upon the direction and approval of the Board. ~~The treasurer may~~ He or she shall give bond, in such amount, and with such surety, as the Board requires, as a condition for the faithful

performance of his or her duties and the proper accounting for all funds and securities coming into his or her hands. He or she shall disburse the funds on warrants drawn by the Board, signed and countersigned as provided herein. (20-81-3.)

Section 3-~~72~~-18. - Prohibited interest of member or employee of ~~the~~ Board.

~~Except as otherwise provided in this Article, no member or employee of the Board shall have any direct or indirect interest in the gains or profits of any investment made by~~ (a) The State and Local Government Conflict of Interests Act, Section 2.2-3100 et seq., of the Code of Virginia, shall apply to members and employees of the Board.

(b) No member or employee of the Board shall, directly or indirectly, for himself or herself or as an agent, in any manner use the ~~same~~funds of the System, except to make such current and necessary payments as are authorized by the Board. (20-81-3.)

Division 4. - Membership in System.

Section 3-7-19. ~~--~~ Membership composition.

(a) Membership shall be ~~comprised~~composed of the following:

- (1) Present employees, ~~as defined within this Article.~~
- (2) All persons who were employees on June 22, 1981, or who were on authorized leave from service on such date.
- (3) Future employees, ~~as identified herein.~~
- (4) ~~Exceptions. Employees of the County who are members of the Virginia Retirement System, the Uniformed Retirement System, and future employees who are eligible to become members of those systems, are not eligible for membership in this System. (5)~~ Former park police officers who elected to transfer to this ~~system~~System from the Fairfax County Uniformed Retirement System pursuant to the provisions of Section 3-3-20(b)(3). Membership in this System shall commence on January 22, 1983. For purposes of this Article, such members shall be deemed to have been appointed on or after July 1, 1981, regardless of being granted any prior service credit pursuant to Section 3-7-20(b). Such members may receive service credit for prior service as a park police officer if the member pays into ~~the~~this System the difference between the amount he or she contributed to the Uniformed Retirement System and the amount he or she would have contributed to this System had he or she been a member during the period for which he or she is ~~seeing~~seeking prior service credit plus an amount equal to the total return of ~~the~~this System's assets in each year for which prior service credit is applied to those contributions that have been in ~~the~~this System had he or she been a member at the time. At the Board's discretion, such a member may pay in installments over a period not to exceed one year. However, prior service credit shall not be granted until payment has been received in full. This offer to purchase service ~~will~~shall be effective for a period of one year from the approval date of this change [February 26, 2001].

(b) Employees of the County who are members of the Virginia Retirement System (VRS) or the Fairfax County Uniformed Retirement System, and future employees who are eligible to become members of those systems, are not eligible for membership in this System.

(c) Persons receiving a normal service or early service retirement allowance from this System, the Fairfax County Employees' Retirement System (~~Article 2~~) or the Fairfax County Uniformed Retirement System (~~Article 3~~) are eligible for membership only under the terms and conditions set forth in Section 3-7-40.

(ed) Notwithstanding any other provision of this Chapter or Article to the contrary, an active member of this System who has more than five (5) years of creditable service in this System and who is appointed to serve as a ~~deputy county executive~~Deputy County Executive shall remain a member of this System, and shall not become a member of the Fairfax County Employees' Retirement System as a result of such appointment. Any such member shall remain a member of this System for so long as he or she is

so employed or subsequently resumes working in a position that is covered under this System. (20-81-3; 35-81-3; 22-83-3; 36-86-3; 27-90-3, § 5; 8-91-3; 56-93-3; 10-01-3; 28-12-3.)

#### Division 5. Service Credit.

Section 3-7-20. - ~~Service credit for prior service.~~ Statement to be filed with Board.

Under such rules and regulations as are adopted by the Board, each member or someone on his or her behalf shall file with the Board, in such form as the Board may prescribe, a statement of the facts pertaining to his or her status as a member, which shall include a statement of all service as an employee, and such other information as the Board may require. Until such statement is filed, no member or his or her beneficiary shall be eligible to receive any benefits under this Article. (20-81-3.)

Section 3-7-21. - Year of service.

The Board shall determine by appropriate rules and regulations how much service in any year is the equivalent of a year of service, but in no case shall it allow credit for more than one (1) year of service for all service rendered in any period of twelve (12) consecutive months. (20-81-3.)

Section 3-7-22. - Membership service credit.

- (a) Each member shall receive membership service credit for service rendered while a member of the System, or after he or she last became a member in the event of a break in his or her membership.
- (b) Each member shall receive membership service credit for any period he or she is on service-connected total disability retirement. All members who have been retired before, and all members who are retired on or after, July 7, 2003, on account of service-connected partial disability pursuant to Section 3-7-29 shall receive membership service credit for any period they are on service-connected partial disability retirement.
- (c) Each member shall be allowed membership service credit for accrued unused sick leave upon making application for retirement, at the rate of one (1) month of credit for each one-hundred-seventy-two (172) hours of accrued unused sick leave; and pro rata credit shall be allowed for each fraction thereof. In determining average final compensation, the member's accrued unused sick leave at the time of retirement may, at the option of the member, be substituted for an equivalent period of creditable service as if the member had continued to work at his or her final salary during the period of his or her accrued unused sick leave.
- (d) Each member shall receive membership service credit for military leave, provided he or she returns to full employment within ninety (90) days of discharge and such discharge is other than dishonorable. (20-81-3; 36-88-3; 8-03-3; 33-03-3.)

Section 3-7-23. - Prior service credit.

- (a) A member shall receive membership service credit for prior employment as a police officer with the County, provided he or she shall return his or her contributions, including picked up amounts, previously paid, in addition to interest received at the yearly rates earned by the System during the period the member's contributions, including picked up amounts, had been withdrawn. The Board may, in its discretion, accept a return of a member's ~~contribution~~ contributions, including picked up amounts on an installment basis, as determined by the Board. Such member may satisfy some or all of the amount due from his him or her for the purchase of such service through a rollover from an individual retirement account if ~~and only if~~ the entire amount in that account is attributable to a rollover from this the System. Such member may also satisfy some or all of the amount due from him or her for the purchase of such service through a direct trustee-to-trustee transfer from an eligible deferred compensation plan described in ~~section~~ Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in ~~section~~ Section 457(e)(1)(A) ~~of the Internal Revenue Code~~, or through a direct trustee-to-trustee transfer from an annuity described in Section 403(b) of the Internal Revenue Code.



- (b) Former park police officers who elected to transfer to this System pursuant to Section 3-3-20(b)(3) and to transfer their contributions from the Fairfax County Uniformed Retirement System pursuant to Section 3-3-20(b)(4)(C) shall be granted membership service credit for their service as park police officers. Any deficits created by this action shall be funded by increasing the rate of employer contributions as determined by the required actuarial evaluation of ~~the~~this System as of June 30, 1983.
- (c) Any former Fairfax County park police officer who transferred to this System from the Fairfax County Uniformed Retirement System between August 1, 1974, and October 31, 1982, and who has remained in continuous service in this System since such transfer, may receive membership service credit in this System for his or her prior service as a park police officer if such member pays into this System:
  - (1) The difference between the amount that he or she had contributed to the Uniformed Retirement System and the amount that he or she would have been required to contribute to this System had he or she been a member during the period for which he or she is seeking prior service credit; and
  - (2) An additional sum representing the amount that ~~the~~this System would have earned on the contributions that he or she would have been required to make to this System had he or she been a member during the period for which service credit is sought under this ~~subsection~~Subsection.

In determining the amount required under condition (2), the Board shall use the historical rate(s) of return on ~~the~~this System's assets during the period for which service credit is sought. At the Board's discretion, such a member may pay in installments over a period not to exceed one (1) year. However, prior service credit shall not be granted until payment has been received in full. This option to purchase service ~~will~~shall be effective for a period of one (1) year from the date of enactment of this ~~subsection~~Subsection [February 26, 2001]. The purchase of service credit for prior service as a park police officer under ~~the provisions of this subsection~~Subsection by a member shall not alter the minimum amount of creditable service that the member is required to have to be eligible for normal service retirement under ~~the provisions of this Article~~. Where a member elects to purchase service credit for prior service as a park police officer under ~~the provisions of this subsection~~Subsection, the Board of Trustees of the Uniformed Retirement System shall transfer from its funds the employer contributions attributable to the member's service for which prior service credit is being purchased under this ~~subsection~~Subsection to this System.

- (d) Members who are former park police officers who transferred their member contributions from the Fairfax County Uniformed Retirement System, including member's contributions from service in a position covered by the Fairfax County Employees' Retirement System prior to their service as a park police officer, may elect to either (i) receive a refund of their Employees' Retirement System member contributions from this System or (ii) purchase membership service credit in this System based upon ~~his~~their prior service in the Employees' Retirement System on the terms and conditions set forth in this ~~subsection~~Subsection.
  - (1) ~~such~~Such members must elect in writing to purchase such service credit within one (1) year of the effective date of this ~~subsection~~Subsection [December 6, 1993]. Members who do not elect to purchase such credit within one (1) year of the effective date of this ~~subsection~~Subsection shall have such contributions refunded to them and shall be deemed to have waived any right to purchase such service credit.
  - (2) Members electing to purchase such credit may do so by paying into this System (A) the difference between the amount which ~~he~~they had contributed to the Employees' Retirement System and the amount ~~he~~they would have been required to contribute to this System had ~~he~~they been ~~a member~~members during the period for which ~~he is~~they are seeking prior service credit and (B) an additional sum representing the amount that ~~the~~this System would have earned on the contributions ~~he~~they would have been required to make to this System had ~~he~~they been a member during the period for which service credit is sought, as determined by using the historical rate(s) of return of ~~the~~this System.
  - (3) At the discretion of the Board, such members may pay the required amounts in installments over a period not to exceed one (1) year. However, such service credit shall not be granted until payment has been made in full.

- (4) The purchase of such service credit shall not alter the minimum amount of creditable service that the member is required to have to be eligible for normal or early service retirement under this Article. ~~(20-81-3; 36-88-3; 8-03-3; 33-03-3)~~ (20-81-3; 22-88-3; 5-85-3; 56-93-3; 36-94-3; 10-01-3; 8-03-3.)

~~Section 3-7-21. Statement to be filed with Board.~~

~~Under such rules and regulations as are adopted by the Board, each member, or someone in his behalf, shall file with the Board, in such form as the Board may prescribe, a statement of the facts pertaining to his status as a member, which shall include a statement of all service as an employee and such other information as the Board may require. Until such statement is filed, no member or his beneficiary shall be eligible to receive any benefits under this Article. (20-81-3.)~~

~~Section 3-7-22. Year of service.~~

~~The Board shall determine by appropriate rules and regulations how much service in any year is the equivalent of a year of creditable service, but in no case shall it allow credit for more than one (1) year of service for all service rendered in any period of twelve (12) consecutive months. (20-81-3.)~~

~~Section 3-7-23. Membership service credit.~~

- ~~(a) Each member shall receive membership service credit for service rendered while a member of this System, or after he or she last became a member in the event of a break in his or her membership.~~
- ~~(b) Each member shall receive membership service credit for any period he or she is on service connected total disability retirement. All members who have been retired before, and all members who are retired on or after July 7, 2003, on account of service connected partial disability pursuant to Section 3-7-29 shall receive membership service credit for any period he or she is on service connected partial disability retirement.~~
- ~~(c) Each member may be allowed membership service credit for accrued unused sick leave upon making application for retirement, at the rate of one (1) month of credit for each 172 hours of accrued unused sick leave; and pro rata credit shall be allowed for each fraction thereof. In determining average final compensation, the member's accrued unused sick leave at the time of retirement may, at the option of the member, be substituted for an equivalent period of creditable service as if the member had continued to work at his or her final salary during the period of his accrued unused sick leave.~~
- ~~(d) Each member shall receive membership service credit for military leave, provided he or she returns to full employment within 90 days of discharge and such discharge is other than dishonorable. (20-81-3; 36-88-3; 8-03-3; 33-03-3).~~

Sec. 3-7-23.1. - Portability of service credit.

~~A. (a) Definitions. For the purpose of this section, the terms shall be defined as follows:~~

- (1) ~~"Accepting plan"~~ shall mean the retirement plan or system which is receiving membership assets from another ~~defined benefit~~ retirement plan or system in order to permit a current member to purchase portability service credit in the accepting plan through the use of his or her membership contributions in the transferring plan.
- (2) ~~"Portability service credit"~~ shall mean service credit purchased in an accepting plan by the transfer of membership assets from the transferring plan.
- (3) ~~"Transferring Plan"~~ plan shall mean the retirement plan or system which is transferring membership assets to an accepting plan to enable a former employee of the transferring plan or system to purchase service in the accepting plan through the use of his or her membership contributions in the transferring plan.
- ~~(Bb)~~ The Board of Supervisors ~~of Fairfax County~~ may enter into agreements with the Virginia Retirement System (VRS) or with any other political subdivision of the Commonwealth of Virginia, provided that



the retirement system of any other political subdivision of the Commonwealth of Virginia is a defined benefit plan or eligible deferred compensation plan described in ~~section~~Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in ~~section~~Section 457(e)(1)(A) ~~of the Internal Revenue Code~~, to permit any vested member of ~~any~~ such plan to purchase portability service credit in ~~the Fairfax County Police Officers Retirement~~this System.

- (~~Cc~~) The purchase of portability service credit in the ~~Fairfax County Police Officers Retirement~~ System pursuant to this ~~section~~Section may only be made within eighteen (18) months of the date when an employee commences employment in a position covered by the ~~Fairfax County Police Officers Retirement System, or within 18 months of the date of the enactment of this ordinance for County System, or for~~ employees who are members of the ~~Fairfax County Police Officers Retirement System on the date of this ordinance~~System on March 24, 2003, within eighteen (18) months thereafter.
- (~~Dd~~) In order to purchase portability service credit in the ~~Fairfax County Police Officers Retirement~~ System, the member must~~shall~~ have served as a sworn law enforcement officer and must~~shall~~ be a vested member of the transferring plan. The transferring plan must~~shall~~ be holding member contributions that are subject to transfer. A member desiring to purchase portability service credit shall make written application for the purchase of such credit to the ~~Fairfax County Police Officers Retirement~~ System. The ~~Fairfax County Police Officers Retirement~~ System will~~shall~~ determine from the transferring plan the amount of the member's assets that would be subject to transfer to the ~~Fairfax County Police Officers Retirement~~ System. Based upon the amount subject to transfer, the Board ~~of Trustees of the Fairfax County Police Officers Retirement System; this amount will~~shall determine the amount of portability service credit that would be actuarially equivalent to the amount of assets to be transferred to the System; this amount shall represent the maximum amount of portability service credit that can be purchased. The Board ~~of Trustees will~~shall communicate the amount of portability service credit that can be purchased to the member in writing; however, in no event will~~shall~~ the amount of portability service credit that can be purchased exceed the duration of the member's employment in a position that was covered by the transferring plan. The member shall have thirty (30) days from the date of the letter advising him or her of the amount of ~~portable~~portability service credit that can be purchased to determine whether to proceed with the purchase or to withdraw his or her application for the purchase of portability service credit.
- (~~Ee~~) In the event that the assets transferred are not sufficient to purchase portability service credit in the ~~Fairfax County Police Officers Retirement~~ System equivalent to five (5) years of service, the member will~~shall~~ not become vested in the ~~Fairfax County Police Officers Retirement~~ System until his or her creditable service equals five (5) years.
- (~~Ff~~) The purchase of portability service credit in the Virginia Retirement System (VRS) or the retirement system of any political subdivision of the Commonwealth of Virginia that is covered by this ~~section~~Section shall be accomplished upon the transfer of assets from the transferring plan to ~~the Fairfax County Police Officers Retirement~~this System. Upon the completion of such transfer, the member shall lose all rights to any ~~benefits and~~ allowances and benefits from the transferring plan, and will~~shall~~ only be entitled to receive ~~benefits and~~ allowances ~~from the Fairfax County Police Officers Retirement~~and benefits from this System.
- (~~Gg~~) When a vested member of ~~the Fairfax County Police Officers Retirement~~this System leaves his or her covered employment and enters a position covered by the Virginia Retirement System (VRS) or by a defined benefit retirement plan of a political subdivision of the Commonwealth of Virginia with which the Board of Supervisors has entered into a portability agreement, the former member of ~~the Fairfax County Police Officers Retirement~~this System may transfer an amount equal to the greater of (i) his or her accumulated member contributions, or (ii) an amount representing the present value of his or her accrued benefits with ~~the Fairfax County Police Officers Retirement~~this System. In order to accomplish the transfer of assets from ~~the Fairfax County Police Officers Retirement~~this System to the accepting plan, the member shall lose all rights to any ~~benefits or~~ allowances ~~from the Fairfax County Police Officers Retirement~~or benefits from this System based upon the service giving rise to the assets transferred to the accepting plan by this System. Should such a person resume service in a position covered by this System in the future, he or she may purchase service credit for such prior service or

purchase portability service credit if eligible to do so, in accordance with the provisions of ~~the~~this Article at the time he or she again becomes a member of this System. (18-01-3; 8-03-3.)

Division 5. ~~---~~ Contributions.

Section 3-7-24. - Member contributions.

- (a) Contributions shall be made by each employee equal to eight ~~and~~ sixty-five ~~one-hundredths~~ percent (8.65%) of his or her creditable compensation per ~~pay~~payroll period.
- (b) There shall be deducted or picked up from the compensation of each member for each and every payroll period subsequent to the date of the establishment of the System to contribution payable by such member as provided in this Section.
- (c) Notwithstanding any other provisions of this Article, no deduction shall be made nor shall amounts be picked up from any member's compensation if the employer's contribution as required is in default.
- (d) The Board of Supervisors may, from time to time, revise the rates ~~at which members are required to contribute~~of member contributions to the System.
- (e) Subsequent to December 22, 1984, ~~Fairfax~~the County shall pick up all employee contributions required herein, for all compensation earned on or after December 22, 1984. All amounts picked up by the County shall be treated as the employer's contribution in determining tax treatment under Section 414(h)(2) of the United States Internal Revenue Code for federal tax purposes, pursuant to 26 USC, § 414(h)(2). For all other purposes, under this Chapter and otherwise, such ~~pick up~~picked up contributions shall be treated as contributions made by a member in the same manner and to the same extent as contributions made by a member prior to December 22, 1984. All picked ~~up~~ amounts shall be included in compensation for purpose of calculating benefits under Division 6. The County ~~of Fairfax~~ shall pay such picked ~~up~~ amounts from the same source of funds, which is used in paying earnings to the employee. (20-81-3; 5-85-3; 22-07-3; 46-08-3; 25-14-3.) ~~Note — The effective date of this Ordinance [25-14-3] is July 1, 2014. The change in the percentage member contribution is to be made starting with the first payroll period following the effective date of this Ordinance. The Ordinance is prospective and is not retroactive in application. The Board of Trustees of the System, the staff of Retirement Administration Agency, and the Director of Human Resources are hereby authorized and directed to take all necessary steps to implement the change in the percentage member contribution.~~

Section 3-7-25. - Employer contributions.

The aggregate present value of future employer contributions payable into the retirement allowance account shall be sufficient, when combined with the amount then held in the members' contribution account and the retirement allowance account together with the present value of future ~~employee~~member contributions, to provide the estimated prospective benefits payable. The annual employer contribution rate shall be fixed as equal to the employer normal cost plus an expense rate, as long as the System's funding ratio (actuarial value of the System's assets divided by actuarial accrued liability of the System) remains within a corridor, the lower measurement of which is described below and the upper measurement of which is one-hundred-twenty percent (120%). The employer normal cost and System actuarial accrued liability are to be measured using the entry age normal funding method.

- To the extent that the System's funding ratio exceeds one-hundred-twenty percent (120%), a credit shall be established equal to the amount of assets in excess of one-hundred-twenty percent (120%) of the actuarial accrued liability.
- To the extent that the System's funding ratio is lower than the lower ~~measurement~~measure of the corridor, a charge shall be established equal to the difference between ~~that~~the lower ~~measurement~~measure plus the actuarial accrued liability and the assets.

The employer contribution shall be adjusted by a fifteen (15-) year amortization of ~~this~~the credit or charge described in this Section, to be paid until the funding ratio re-enters the corridor, at which time it ~~will cease; provided, however, the Board of Supervisors shall contribute to the fund an amount at least equal to the amount contributed by the members~~shall cease.

Effective with the fiscal year 2016 County contribution rate, the lower ~~measurement~~measure of the corridor ~~will~~shall be established at ninety-five percent (95%). The ninety-five (95%) threshold ~~will~~shall be increased until it reaches one-hundred percent (100%), no later than by the year 2020. Once the lower measurement of the corridor reaches one-hundred percent (100%), the fifteen (15) year amortization described above shall be over a fixed fifteen (15) years with additional fifteen (15) year amortization layers created annually. Once the System's funding ratio reaches one-hundred percent (100%), such amortizations shall cease.

In the event of an ordinance change that affects member benefits, the employer contribution rate shall be changed effective with the July 1 coincident with or next following the date of adoption of the ordinance change. The employer normal cost component shall be adjusted to the level required by the ordinance change and there ~~will~~shall be an additional component to the employer cost equal to the increase in actuarial accrued liability. Any additional actuarial accrued liability which does not reduce the funding level below one-hundred-twenty percent (120%) shall be excluded from this component. ~~(20-81-3; 16-02-3; 28-15-3, § 3)~~

All contributions made to the System are made for the exclusive benefit of the members and their beneficiaries, and such contributions shall not be used for, nor diverted to, purposes other than for the exclusive benefit of the members. Notwithstanding the foregoing, to the extent that such refunds do not, in themselves, deprive the System of its qualified status, refunds of contributions shall be made to the employer under the following circumstances:

(a) If the System is determined not to initially satisfy qualification requirements of Section 401(a) of the Internal Revenue Code and the employer declines to amend the System to satisfy such qualification requirements, contributions made prior to the determination the System has failed to qualify shall be returned to the employer;

(b) To the extent that a federal income tax deduction is disallowed in whole or in part for any employer contribution; and

(c) If a contribution is made in whole or in part by reason of a mistake of fact, the employer contribution attributable to the mistake of fact shall be returned to the employer. (20-81-3; 16-02-3; 52-13-3; 28-15-3, § 3.)

Division 6. ~~— Benefits and Conditions.~~

Section 3-7-26. ~~— Service retirement.~~

(a) Normal ~~Retirement~~service retirement.

(1) Any member employed on active duty on or before June 30, 1981, who has attained twenty (20) years of creditable service or age fifty-five (55) years shall be eligible for retirement on that date when written notification is provided to the Board by the member setting forth at that time when the retirement is to become effective.

(2) Any member employed on active duty ~~or~~ following July 1, 1981, who has attained twenty-five (25) years of creditable service or age fifty-five (55) years shall be eligible for retirement on that date when written notification is provided to the Board by the member setting forth at that time when the retirement is to become effective.

(b) Early ~~Retirement~~service retirement. Any member appointed subsequent to July 1, 1981, who has attained twenty (20) years of creditable service, shall be eligible for early service retirement, when written notification is provided to the Board by the member setting forth at that time when the retirement is to become effective.

- (c) Ineligibility. Any member who applies for ~~pension and benefits~~service-connected disability pursuant to Section 3-7-28, or who applies for partial service-connected disability pursuant to Section 3-7-29, and who receives the ~~pension~~allowance and benefits prescribed by Section 3-7-28 as a result thereof, on or after the effective date of Subsection 3-7-28(d) [July 1, 1988], shall not be eligible for retirement under this Section while receiving ~~pension~~allowances and benefits for disability. (20-81-3; 14-87-3; 36-88-3.)

Section 3-7-27. ~~—~~ Service retirement allowance.

- (a) Normal service retirement. Any member who retires on or after July 1, 2000, pursuant to Section 3-7-26(a) shall receive an annual retirement allowance, payable monthly for life, consisting of two ~~and~~ eight-tenths percent (28/102.8%) of his or her average final compensation for each year of creditable service, as computed on the basis provided in Section 3-7-2; but in no event shall his or her total retirement allowance exceed eighty-four percent (84%) of his or her average final compensation. The annual retirement allowance of a member who retires or who has retired on or before June 30, 2000, or of a surviving spouse or surviving handicapped child of such a member receiving an allowance under an election made by the member under Section 3-7-39, shall be increased, effective July 1, 2000, by twelve ~~(12%)~~ percent (12%).
- (b) Early service retirement. Upon retirement, with twenty (20) years of creditable service, ~~members pursuant to Section 3-7-26(b), any member~~ appointed subsequent to July 1, 1981, shall receive the annual retirement allowance computed on the basis provided in Subsection (a) of this Section reduced on an actuarial equivalent basis for the period that the actual retirement date precedes the normal retirement date as projected on Table 1. ~~(20-81-3; 6-00-3, § 1.)~~

TABLE 1

FAIRFAX COUNTY POLICE OFFICERS RETIREMENT ~~PLAN~~SYSTEM

Actuarial Reduction Factors That Would Apply to ~~Participants~~Members With a Normal Retirement Age Requirement of 25 years of Service (or, Attainment of Age 55, if Earlier) if They Are Permitted To Retire Early With a Reduced ~~Pension~~Retirement Allowance After 20 Years of Service

(ASSUMES 4% COST-OF-LIVING ADJUSTMENTS ARE EFFECTIVE AT RETIREMENT)

Age at Retirement	Years of Service					
	20	21	22	23	24	25
38	74.50	79.17	84.06	89.18	94.48	100.00
39	74.18	78.89	83.83	89.01	94.39	100.00
40	73.84	78.61	83.60	88.84	94.30	100.00
41	73.49	78.32	83.37	88.67	94.21	100.00
42	73.11	78.01	83.13	88.50	94.12	100.00
43	72.72	77.68	82.88	88.33	94.03	100.00

44	72.32	77.34	82.61	88.14	93.93	100.00
45	71.89	76.98	82.34	87.95	93.83	100.00
46	71.44	76.61	82.04	87.75	93.73	100.00
47	70.97	76.22	81.74	87.53	93.62	100.00
48	70.48	75.81	81.41	87.31	93.50	100.00
49	69.96	75.38	81.08	87.07	93.38	100.00
50	69.42	74.92	80.72	86.83	93.25	100.00
51	74.45	74.45	80.35	86.57	93.11	100.00
52	79.95	79.95	79.95	86.29	92.97	100.00
53	86.00	86.00	86.00	86.00	92.82	100.00
54	92.66	92.66	92.66	92.66	92.66	100.00
55	100.00	100.00	100.00	100.00	100.00	100.00

~~(36-83-3; 28-89-3)~~ Joint and contingent spouse and handicapped child options. Any member who qualifies for normal or early service retirement under this Section is eligible to elect a joint and contingent spouse and handicapped child option under Section 3-7-39. (20-81-3; 6-00-3, § 1; 36-83-3; 28-89-3; 27-90-3, § 5; 13-92-3; 34-94-3.)

Section 3-7-28. - Service-connected disability retirement.

- (a) Any member who in the discharge of his or her official duties has become totally disabled as a result of an accident or personal injury on or before June 30, 1981, shall receive an annual retirement allowance, payable monthly, equaling sixty-six and two-thirds percent (~~66 2/3~~ 66 2/3%) of the salary that would have been received had no injury occurred and the performance of duty had continued. Such pension allowance and benefits shall continue during the existence of such total disability, or until such time as eligibility is reached for normal service retirement pursuant to Section 3-7-26(a)(1).
- (b) Any member who in the discharge of his or her official duties has become totally disabled as a result of an accident or personal injury on or ~~subsequent to~~ after July 1, 1981, shall receive an annual retirement allowance, payable monthly, equaling sixty-six and two-thirds percent (~~66 2/3~~ 66 2/3%) of the salary the member received on the date of the accident or personal injury subject to the provisions of Section 3-7-37. Such allowance shall continue during the existence of such total disability, or until such time as eligibility is reached for normal service retirement pursuant to Section 3-7-26(~~ba~~)(2).
- (c) The amount of compensation awarded under the Virginia Workers' Compensation Act ("~~the~~ Act") to such members for temporary total or partial incapacity, including any awards of cost-of-living increases under the Act, shall be deducted from such retirement allowance. Whenever the member is no longer

entitled to receive payments for temporary total or partial incapacity under the Act because of the limits in the Act as to the total amount of such compensation or as to the period of time that the member is entitled to receive such compensation, such payments shall no longer be used to reduce the monthly retirement allowance and, accordingly, subsequent monthly payments of the allowance shall be determined as if the original allowance had been computed without reduction for such payments.

- (d) Any member who applies for a service-connected disability retirement ~~and an~~ allowance pursuant to Subsection (a) or (b) of this Section, or who applies pursuant to Section 3-7-29, and who receives the allowance prescribed by this Section as a result thereof, on or after the effective date of this Subsection [July 1, 1988], shall receive the allowance so provided during the existence of such disability, until the total membership service credit period equals twenty-five (25) years, whereafter said allowance shall be reduced to sixty percent (60%) of the salary that would have been received had no injury occurred and the performance of duty continued.
- (e) With respect to all retirements after the effective date of this Subsection ~~[(January 11, 1993)]~~ pursuant to this Section or as a result of an application pursuant to Section 3-7-29 as a result of which the member receives the allowance provided by this Section, if a member receives some or all of his or her compensation for temporary total or partial incapacity under the Act ~~Virginia Workers' Compensation Act (Act)~~ in the form of a lump sum payment, he or she shall receive no monthly retirement allowance otherwise payable under this Section until such time as the amounts he or she would have received equal the amount of his or her lump sum benefit under the Act; provided, ~~however,~~ neither a lump sum payment or any portion thereof representing compensation for permanent total or partial loss or disfigurement under the Act nor a lump sum payment or a portion thereof representing compensation for periods of temporary total or partial incapacity which occurred prior to the effective date of the member's retirement under this Section shall be offset against the member's allowance under this Section; and provided further, that in the event that the member receives a lump sum settlement of benefits that he or she is or may be entitled to in the future under the Act, and said settlement does not specify how much of the sum represents settlement of his or her entitlement to temporary total or partial incapacity, as opposed to other benefits, the Board shall determine the portion of such lump sum which in its judgment represents compensation for such benefits. (20-81-3; 8-82-3; 4-83-3; 36-88-3; 13-92-3; 1-93-3.)

Section 3-7-29. - Partial service-connected disability retirement.

- (a) ~~For purposes of this Article, "total disability" shall be defined as the inability of the member to reasonably perform his or her duties as a police officer. "Partial disability" shall be defined as the inability of the member to perform some part of the duties of a police officer, such as in administrative or desk assignments. (b)~~ Members granted pension ~~a retirement allowance~~ and benefits for partial disability shall be subject to recall to active service by the Board when police officer positions are available in the Police Department that they are capable of performing, as determined by the Chief of Police. If so recalled, all pension ~~retirement allowances~~ and benefits for partial disability shall terminate from and after the date of such recall.
- (~~e~~b) Any member becoming partially disabled in the manner provided in this Section, who shall remain in the Police Department in a police officer position which he or she is capable of performing, shall not receive pension ~~retirement allowances~~ and benefits until such service credit is acquired as would otherwise be required for service retirement.
- (~~d~~c) If the Chief of Police determines that there is no suitable police officer position available for a partially disabled member, such member shall then be treated as totally disabled under the provisions of this Article from and after the date of his or her separation from employment with the Police Department.
- (~~e~~d) The surviving spouses and dependants ~~dependents~~ of all members who have been retired before and of those who are retired on or after July 7, 2003, on account of partial service-connected partial disability shall be entitled to benefits under Section 3-7-41. (20-81-3; 33-03-3).

Section 3-7-30. Processing disabilities.



- (a) Upon receiving a member's or the employer's written request for disability benefits, the Board shall require ~~such~~the member to submit, from a physician of the member's choice, a written report of findings and recommendations. The Board shall then select a physician of its choice and require the member to submit to a medical examination. In the event there is not a clear preponderance of medical evidence from the above two (2) physicians, a third physician ~~will~~shall be selected by the original two (2) physicians, who ~~will~~shall also examine the member and submit a written report of findings and recommendations.
- (b) A waiver of examinations, as required by this Section, may be made by either the Board or member for justifiable causes; but in no event shall any member be granted disability benefits without submitting to at least one (1) medical examination.
- (c) Failure of any member to submit to medical examination as required by this Section may result in the denial, loss or reduction of the member's disability benefits.
- (d) Any member submitting a written request for disability benefits on or after the effective date [of Ord. No. 24-85-3] shall, prior to or simultaneously with submitting such request, apply for all ~~Workers' Compensation~~workers' compensation benefits to which he or she may be entitled. The member shall also be required to submit to the Board copies of the dispositions as made of his ~~Workers' Compensation~~or her workers' compensation claims and any subsequent awards or other documents reflecting any modification or termination of ~~such~~any awarded workers' compensation benefits. With respect to the determination of a member's eligibility for disability benefits, the Board shall give great weight to the decisions of the ~~Industrial~~Virginia Workers' Compensation Commission, the Court of Appeals of Virginia, and the Supreme Court of Virginia on the compensability of his or her disability under the ~~Worker's~~Virginia Workers' Compensation Act, and the Board may modify its prior determination of his or her eligibility under this Section in light of any such decision within ninety (90) days after the date such decision becomes final. (20-81-3; 24-85-3; 13-92-3.)

Section 3-7-31. - Non-service-connected disability retirement.

- (a) Any member who becomes totally disabled, but not as a result of activities in the ~~performance~~discharge of his or her official duties, may receive a non-service-connected disability benefit equal to the same benefit pursuant to Section 3-7-27, provided the service credit requirements exist thereof.
- (b) Members who do not have the service credit required in Section 3-7-26 shall receive a disability benefit in an amount equivalent to the greater of (1) ten percent (10%) of his or her average final compensation, or (2) ~~of~~ an amount determined under Section 3-7-27(a).
- (c) Members granted benefits under this Section shall not receive service credit while on non-service-connected disability, nor shall their surviving spouses or dependents be eligible for benefits under this Article. (20-81-3.)

Section 3-7-32. - Rehabilitation of disabled members.

- (a) The Board may determine, upon receiving supporting medical data from any two (2) physicians, as referred to in Section 3-7-30, that a disabled member has sufficiently recovered to perform a part or all the duties of a police officer, or to engage in other gainful employment in which he or she might reasonably be expected to be engaged, in light of education, training, or experience. To the extent that such member has sufficiently recovered but is unable to be certified to full-time active duty as a police officer, the Board may determine the degree of partial disability then still existing and reduce the disability benefits accordingly. The determination of partial disability shall be based upon the medical record and the ability of the member to seek gainful employment in light of education, training, experience, retraining, and rehabilitation.
- (b) The Board is authorized to enter into contracts or agreements for the rehabilitation of disabled members and to pay reasonable costs thereof. (20-81-3; 33-03-3).

Section 3-7-33. - Medical reevaluation of disabled members; penalty for unjustified refusal of medical attention, vocational rehabilitation ~~and/or selective employment under the Virginia Workers' Compensation Act~~, or to submit to medical reevaluation.

- (a) ~~Medical reevaluations. (1)~~ Once each year during the first five (5) years following disability, and once every three- ~~(3)~~ year period thereafter, the Board shall require such members to undergo medical examinations by the same physicians as specified in Section 3-7-30, if available. Should any such physician be unavailable, a successor shall be designated, as previously determined in Section 3-7-30. ~~(2)~~ Each physician shall independently examine such member and submit a written report of findings and recommendations to the Board. In the event that such member fails to submit to these medical examinations, benefits shall be discontinued until the member submits to the examinations; and should the refusal continue for one (1) year, all rights to disability benefits under this Article shall terminate. ~~(3)~~ — In lieu of the examinations specified in ~~Subsections (a)(1) and (a)(2) of this Section~~ this Subsection, the Board, in its discretion, may accept the reports of physicians who are treating or examining the member for purposes of the Virginia Workers' Compensation Act.
- (b) Members who are receiving service-connected disability retirement allowances pursuant to Section 3-7-28, and who are receiving periodic payments pursuant to the Virginia Workers' Compensation Act which payments are required to be offset against such allowances pursuant to Section 3-7-28 shall cooperate with and accept medical services, vocational rehabilitation, and/or selective employment provided pursuant to the ~~Virginia Workers' Compensation Act~~. In the event that such a member's periodic payments are suspended by the Virginia Workers' Compensation Commission (Commission) then the allowance pursuant to Section 3-7-28 shall be computed as if the member had received the suspended payments unless the Board, in its discretion determines not to accept the decision of the Commission. Should such member's refusal to accept medical services, vocational rehabilitation and/or selective employment continue for three-hundred-sixty-five (365) days whether or not consecutive, all his or her rights to any future disability allowance shall cease. The Board shall make appropriate adjustments to the member's allowance if the suspension by the ~~Workers' Compensation~~ Commission is subsequently reversed or modified. Employers shall promptly notify the Board of any suspensions or releases from suspensions affecting members subject to this Subsection. For purposes of this ~~Section~~ Subsection, an order of the ~~Workers' Compensation~~ Commission suspending compensation for refusal creates a rebuttable presumption that the member unjustifiably refused medical services, vocational rehabilitation, and/or selective employment. (20-81-3; 41-93-3; 29-97-3.)

Section 3-7-34. - Reduction of disability allowance.

- (a) Whenever the Board concludes that any member receiving a ~~service-connected~~ disability retirement allowance pursuant to either Section 3-7-28 or 3-7-29 is, prior to his or her normal service retirement date, engaged in a gainful occupation or work paying more than the difference between his or her service-connected disability allowance and his or her average salary, the Board shall reduce such retirement allowance to an amount which, together with the amount earned by the member, equals the amount of his or her average salary.
- (b) Members receiving ~~an~~ a disability retirement allowance pursuant to either Section 3-7-28 or 3-7-29 shall submit by May 30~~th~~ of each year a copy of that portion of their federal income tax returns showing the amount of their earned income and copies of W-2 forms (wage statements) provided by their employers to the Board for the previous calendar year. Failure to submit such documentation on request shall result in the loss of the allowance until the documentation is provided; and should a member's refusal continue for one (1) year, all his or her rights to any further disability retirement allowances shall cease.
- (c) The Board shall adopt written regulations governing the administration of this Section, providing for, among other things, the notification to the members deemed appropriate, and allowing for late submission of required documentation for good cause shown. (20-81-3; 36-88-3.)

Section 3-7-35. - Presumption; hypertension or heart disease.



Any condition or impairment of health of any such member caused by hypertension or heart disease resulting in total disability shall be presumed to have been suffered in the discharge of his or her official duties unless the contrary be shown by competent evidence; provided, that prior to making any claim based upon such presumption for ~~pension~~retirement allowances and benefits under ~~the provisions of~~ this Section on account of such total or partial disability, such member shall have been found free from cardiovascular disease by a physical examination which shall include such appropriate laboratory and other diagnostic studies as the Board may prescribe, and which shall have been conducted by physicians whose qualifications shall have been prescribed by the Board; and provided further ~~than, that~~ any such member claiming that his or her disability was suffered in the discharge of his or her official duties shall, if requested by the Board, submit to physical examination by any physician designated by the Board, which examination may include such tests or studies as may reasonably be prescribed by the physician so designated. Such member shall have the right to have present at such examination, at his or her own expense, any qualified physician he or she may be designate. (20-81-3.)

Section 3-7-36. - Disability as a result of negligence.

Should an accident or personal injury causing total disability be the result of the member's own gross and willful negligence, wanton neglect of duties and responsibilities, drunkenness, or illicit use of narcotics, such disability shall be deemed to be a non-service-connected disability and the benefits shall be fixed pursuant to provisions of Section 3-7-31. (20-81-3.)

Section 3-7-37. - Cost-of-living ~~adjustment~~adjustments.

Monthly retirement allowances shall be adjusted effective July 1, 1981, and each July 1 thereafter in order to reflect changes in the cost of living since the date of benefit commencement; provided, ~~however,~~ that allowances for service-connected disability retirement shall be subject to the provisions of Subsection (d) of this Section. The monthly allowance to be effective July 1 of any such year shall be the allowance in effect immediately prior to such adjustment increased for the basic cost-of-living increase provided for in Subsection (a) of this Section, with such increase reduced as provided in Subsection (c) of this Section in the event the monthly retirement allowance has been in pay status for less than twelve (12) months.

- (a) The basic cost-of-living increase shall be the lesser of four percent (4%) and the percentage corresponding to the percentage increase in the Consumer Price Index during the twelve- ~~(12)~~ month calendar period ending with the March immediately preceding the July in which the increase is effective. For the purpose of this Section, "~~Consumer Price Index~~" shall mean the Consumer Price Index for all Urban Consumers (CPI-U) as issued by the Bureau of Labor Statistics of the U.S. Department of Labor for the appropriate Standard Metropolitan Statistical Area (SMSA) that includes ~~Fairfax~~the County, ~~Virginia~~.
- (b) As part of each biennial actuarial valuation, the actuary shall determine the percentage ~~Supplemental~~supplemental cost-of-living increase (not greater than one percent (1%) that can be provided on the following two (2) July ~~first's~~firsts (1sts) based upon the available actuarial surplus). The ~~Trustees~~Board then may, but shall not be required to, increase all retirement allowances in pay status on each of such July first's ~~(1st)~~ by such actuarially determined percentage. For the purpose of this Section, "~~available actuarial surplus~~" shall mean the excess of the actuarial value of the assets of the System over the actuarial accrued liabilities of the System as disclosed in the biennial actuarial valuation of the System.
- (c) In the event a retired member has not been receiving his or her retirement allowance for twelve (12) full months, the basic cost-of-living increase and the supplemental cost-of-living increase shall be determined as the percentage of the full increase determined in Subsections (a) and (b) ~~above of this Section~~ as follows:

Number of Complete Months	Percentage of
<del>Benefit</del> <u>Member</u> Has Been in Pay Status	Full Increase

Less than 3 .....0%

3, 4 or 5 .....25%

6, 7 or 8 .....50%

9, 10 or 11 .....75%

- (d) Cost-of-living adjustments provided by this Section shall be applied to the net amount of the member's service-connected disability retirement allowance after all reductions required by Section 3-7-28 have been made. The member's allowance after the adjustments for cost of living provided by this Section at any date in time shall be determined by retroactive computation from the date of initial retirement, and the application of all applicable cost-of-living adjustments to the net allowance which the member is entitled to under Section 3-7-28. (20-81-3; 1-93-3; 26-10-3.)

Section 3-7-38. - Refund of contributions upon withdrawal or death; ~~and deferred vesting benefits~~ vested benefit.

- (a) Refund of contributions.

(1) In the event of the death of any member, active or retired, the difference between the total contributions made hereunder by such member, including picked up amounts, and any benefit payments received by him or her, his or her surviving spouse or dependents, shall be payable to his or her estate or designated beneficiary; ~~provided, however,~~ that such payment shall be made only after the cessation of benefits under Section 3-7-41 or Section 3-7-43.

(2) Any member who shall have been separated from the ~~services~~ service and whose employment shall have been terminated otherwise than by death or retirement shall, on application made within two (2) years from the date of such separation, be refunded all of his or her accumulated contributions, including picked up amounts; provided, ~~however,~~ that if such member has received payments or benefits under ~~this~~ the System, the amount of such payments or benefits shall be deducted from the amount to be refunded; ~~and~~ provided further, that should any retired member be receiving benefits hereunder at the time of his or her death then, and in that event, his or her dependents, or beneficiaries if any, who are not eligible to receive benefits under this Article shall receive the difference between the total contributions made hereunder by such member, including picked up amounts, and any payments received, and at the same rate which such retired member was receiving benefits.

- (b) Deferred vested benefit. If a member has five (5) or more years of creditable service on his or her date of separation from the County, the member may leave his or her accumulated contributions, including picked up amounts, in the ~~fund~~ System and receive a deferred ~~annuity~~ vested benefit payable beginning the date the member attains age fifty-five (55) years, or in an actuarially reduced amount payable at the optional early retirement age, in accordance with applicable provisions of this Article. (20-81-3; 5-85-3; 28-89-3; 10-01-3.)

Section 3-7-39. - Joint and contingent spouse and handicapped child options.

Any member who qualifies for normal or early service retirement under ~~the provisions of~~ Section 3-7-26, and with the exception of any member converting from disability ~~pension and benefit~~ retirement to normal service retirement at twenty-five (25) years of creditable service, may elect at the time of retirement to have his or her retirement compensation continue to be paid to either (1) his or her spouse in the event such spouse survives the member, or (2) his or her surviving handicapped child, if at the time of election the member has no spouse; in either event, the retirement allowance provided for in Section 3-7-27 shall be recomputed for a joint and survivor annuity in accordance with Table ~~3-2~~ 3-2. Such reduced amount shall be paid the member during his or her lifetime, with the indicated percentage of the reduced amount paid to his or her surviving spouse for such spouse's lifetime, or to his or her surviving handicapped child for such child's lifetime, as the case may be. Such election shall become irrevocable upon commencement of such payments except in the case that such spouse or surviving handicapped child, as the case may be,

predeceases the member or if the handicapped child is determined by the Board to no longer be permanently mentally incompetent or permanently physically handicapped, then such member's retirement allowance shall be increased to that amount to which the member would have been entitled had no election been made.

TABLE ~~32~~  
FAIRFAX COUNTY POLICE RETIREMENT ~~PLAN~~OFFICERS RETIREMENT SYSTEM  
Actuarial Adjustment Factors That Would Apply to ~~Participants~~Members With a Normal or Early Service Retirement ~~Benefit~~Allowance Determined Under Section 3-7-27 Who Elect a Joint and Contingent Spouse and Handicapped Child ~~Option~~Options

Percent of <del>Benefit</del> <u>Allowance</u> Continued to Spouse Upon <del>Participant</del> <u>Member's</u> Death	Factor for Equal Ages <sup>1</sup>	Increase/Decrease For Each Full Year Beneficiary Is Older (Younger) Than Employee	Maximum Factor
100%	89.2%	0.6%	96%
66 2/3%	92.1%	0.4%	98%
50%	93.1%	0.3%	99%

1. Factor applied to adjust ~~participant's benefit~~member's allowance, as determined under Section 3-7-27, for joint and contingent spouse and handicapped child option for a ~~participant~~member and spouse of equal age. (~~20-81-3; 27-90-3, § 5; 13-92-3.~~)

Section 3-7-40. - Cessation of normal or early retirement allowance.

- (a) ~~The provisions of~~ Subsection (b) of this Section shall apply to persons who are receiving a normal or early service retirement allowance from this System, the Fairfax County Uniformed Retirement System, or the Fairfax County Employees' Retirement System and who submitted their application for such allowance to the Board of such ~~System~~system on or before July 21, 1986. ~~The provisions of~~ Subsection (c) of this Section shall apply to persons who are receiving a normal or early service retirement allowance from this System, the Uniformed Retirement System, or the Employees' Retirement System and who submitted their application for such allowance to the Board of such ~~System~~system after July 21, 1986.
- (b) Should a person receiving a normal or early service retirement allowance from this System, the Fairfax County Employees' Retirement System, or the Fairfax County Uniformed Retirement System ("retiree") return to regular service in a permanent position in any office or employment paid directly or indirectly by ~~Fairfax~~the County, he or she shall elect to receive such retirement allowance under ~~the provisions of either Subsection (b)(1) or (b)(2) of this Section~~one (1) of the following two (2) options.
  - (1) Such allowance shall not commence or, if already commenced, shall cease while the retiree is so employed. His or her allowance shall commence or resume upon application or reapplication by the retiree after he or she has ceased permanent employment in such a position. The allowance of a retiree of this System who is appointed to a position covered by the Employees' Retirement System or Uniformed Retirement System shall commence or resume at that cost-of-living adjustment amount pursuant to Section 3-7-27 which would have been payable had the retiree continued to receive his or her allowance without interruption. A retiree of this System who elects in writing at the time of reappointment to a position covered by this Article not to become a contributing member ~~again~~ during his or her period of reemployment shall be exempted from the

requirement to make contributions to this System. A retiree of this System who elects in writing at the time of reappointment to a position covered by this Article to become a contributing member ~~again~~ during his or her period of reemployment shall be eligible:

- (A) For a recomputation of his or her allowance to take into account creditable compensation and creditable service attributable to the period of reemployment during which his or her allowance was suspended under this ~~Section~~ Subsection.
- (B) To make a new election for any optional benefit to which he or she is entitled; and
- (C) For a retirement allowance for a service-connected disability arising out of and in the course of his or her reemployment (in lieu of his or her service retirement allowance).

A retiree of the Employees' Retirement System or Uniformed Retirement System who is appointed to a position covered by this Article and elects in writing within thirty (30) days of such appointment may be excluded from membership in this System.

- (2) The ~~Retiree~~ retiree may elect to continue to receive his or her service retirement allowance. A retiree electing this option shall not be eligible for membership in the Employees' Retirement System or Uniformed ~~retirement system~~ Retirement System if either covers the position in which he or she is reemployed. If he or she is a retiree of this System and the position in which he or she is reemployed is covered by this System, he or she shall not be required to contribute to this System during his or her period of reemployment.
- (c) A person receiving a normal or early service retirement allowance from this System, the ~~Uniformed Retirement System, or the Fairfax County~~ Employees' Retirement System, or the Fairfax County Uniformed Retirement System ("retiree"), may return to employment for which compensation is paid directly or indirectly by ~~Fairfax~~ the County subject to the following conditions:
  - (1) A retiree shall not receive in combined compensation and retirement allowance, computed monthly, any more than one-hundred-fifteen percent (115%) of the then current maximum monthly salary for a Deputy County Executive in the County's Compensation Plan. The appropriate ~~Board is authorized and directed to~~ Retirement System Board of Trustees shall reduce the retiree's allowance as necessary to keep the combined salary and allowance at this limit. For purposes of this Subsection, a retiree's retirement allowance shall be deemed to be the allowance that he or she would receive if he or she had not elected a joint ~~or last survivor and contingent spouse or handicapped child~~ option which results in an actuarially reduced allowance. Employers under all three (3) systems shall report salaries paid to retirees to the retiree's Board.
  - (2) A retiree who is employed in a position of service ~~in~~ which would otherwise make him or her eligible for membership in this System, the Uniformed Retirement System, or the Employees' Retirement System shall not be eligible for membership in that system.
- (d) Notwithstanding any other provision of this Article or any other Article of this Chapter, a ~~retiree~~ person receiving a normal or early service retirement allowance from this System, the Fairfax County Employees' Retirement System, or the Fairfax County Uniformed Retirement System (retiree) may be employed in a position under his or her former appointing authority subject to the following terms and conditions.
  - (1) If the retiree is a member of this System and service in the position to which he or she is to be re-appointed ordinarily would result in membership in this System, his or her normal or early service retirement allowance shall be suspended for the duration of his or her new employment. During his or her new employment, he or she shall make member contributions to this System. At the time of his or her new employment, he or she shall be entitled to make all elections available to new members of this System, and if otherwise eligible, during his or her employment, he or she may apply for ~~ordinary~~ service-connected or non-service-connected disability retirement. In such case, his or her combined years of service and his or her average final compensation based on his or her new employment shall be used in calculating the disability retirement allowance. On re-application for service retirement from his or her new employment, the retiree shall receive as his or her service retirement allowance the higher of (i) his or her initial service retirement

allowance increased by any cost-of-living increases that were granted by the Board to service retirements during the period of his or her new employment or (ii) a service retirement allowance calculated on the basis of his or her combined years of creditable service in his or her initial and new employment and his or her average final compensation calculated on the basis of the creditable compensation that he or she received during both his or her initial and new employment, as if there had been no break in service.

- (2) A retiree who is a member of this System and who is to be re-appointed to a position of service ~~in~~ which would result in membership in either the Employees' Retirement System or Uniformed Retirement ~~Systems~~System but for his or her membership in this System, shall be subject to the provisions of Subsection (b) or (c) of this Section, whichever is applicable.
- (3) If the retiree is a member of either the Employees' Retirement System or Uniformed Retirement ~~Systems~~System and service in the position to which he or she is to be appointed would result in membership in this System but for his or her membership in the other system, the retiree shall be subject to the provisions of Subsection (b) or (c) of this Section, whichever is applicable.
- (4) ~~The provisions of this~~ This Subsection ~~(d)~~ shall apply to all persons appointed to positions on or after March 1, 1990, service in which would ordinarily make them members of this System, the Employees', Retirement System, or the Uniformed, ~~or Police~~ Retirement ~~Systems~~System. (20-81-3; 35-81-3; 27-90-3, § 5; 10-01-3; 11-05-3.)

Section 3-7-41. - Benefits to surviving spouse and children of members deceased before or during ~~ordinary~~ service retirement.

- (a) The surviving spouse of a member who dies before retirement or while receiving a service ~~pension~~retirement allowance shall be entitled to receive relief from the System in an amount equal to \$1,000.00 per month. Any surviving children of such member under eighteen (18) years of age shall be entitled to receive relief in an amount equal to \$400.00 per month; and any child under the age of twenty-three (23) years who is a full-time student in an accredited college or secondary school shall also receive such relief; and any handicapped child shall receive such relief during the child's lifetime. Upon death of the surviving spouse, a surviving handicapped child, if any, shall be entitled to receive continued relief from the System as if that child were a surviving spouse, in addition to any other relief he or she is entitled to as a surviving child. Relief granted any child, not handicapped, shall cease upon said child's marriage or said child's becoming self-supporting, whichever shall occur first. Relief granted to a handicapped child shall cease if said child becomes self-supporting or if said child is determined by the Board no longer to be permanently mentally incompetent or permanently physically handicapped based on evidence available to the Board in accordance with Section 3-7-41(b). No combination of the relief previously granted shall be paid to the spouse or handicapped child, as the case may be, and children of any one member in an amount exceeding \$2,000.00 per month. Benefit amounts as listed above shall be adjusted on July 1 of each year after enactment by the lesser of four percent (4%) and the percentage corresponding to the percentage increase in the Consumer Price Index during the twelve (12-) month calendar period ending with the March immediately preceding the July in which the increase is effective. For the purpose of this Section, "~~Consumer Price Index~~" shall mean the Washington, DC-MD-VA index of the Consumer Price Index for all Urban Consumers (CPI-U) as issued by the Bureau of Labor Statistics of the U.S. Department of Labor. Benefits conferred upon a surviving spouse pursuant to this Section shall extend to the surviving spouses of service retirees who died prior to the enactment of this Article.
- (b) Once each year during the first five (5) years following the Board's commencement of payments to the handicapped child, and once every three- (3) year period thereafter, the Board shall require such handicapped child to undergo medical examinations by the same physicians as specified in the selection process set forth in Section 3-7-30, if available. Should any such physician be unavailable, a successor shall be designated, as previously determined in Section 3-7-30.

Each physician shall independently examine such handicapped child and submit a written report of findings and recommendations to the Board. In the event that such handicapped child fails to submit to these medical examinations, benefits shall be discontinued until the handicapped child submits to the examinations; and should the failure continue for one (1) year, all rights to benefits under this Article shall

terminate. The Board is authorized to determine that the handicapped child no longer qualifies as such, based on such written report and other evidence acceptable to the Board in its sole discretion.

- (c) Handicapped children receiving an allowance pursuant to Section 3-7-39 shall submit by May 30<sup>th</sup> of each year a copy of that portion of their ~~Federal~~federal income tax returns showing the amount of their earned income and copies of W-2 forms (wage statements) provided by their employers to the Board for the previous calendar year. Failure to submit such documentation on request shall result in the loss of allowance until the documentation is provided; and should a handicapped child's failure continue for one (1) year, all rights to benefits shall cease.
- (d) Effective on and after January 1, 2007, if a member dies while performing "qualified military service" as defined in Section 414(u) of the Internal Revenue Code, any benefits under this Section ~~3-7-41(a)~~ that would have been provided under the System if the member had resumed employment on the day prior to his or her death and then terminated employment due to death shall be paid to such member's designated beneficiary or, if applicable, estate. (20-81-3; 8-82-3; 28-89-3; 13-92-3; 29-09-3; 01-11-3.)

Section 3-7-42. - Benefits to surviving spouses and children of members receiving service-connected disability.

The entitlements and conditions of surviving spouses and children of members receiving service-connected disability compensation shall be as provided in Section 3-7-41. (20-81-3.)

Section 3-7-43. - Benefits to surviving spouses and children of members killed while in performance of official duties.

The surviving spouse or, if no surviving spouse, the surviving handicapped child, of any member killed while in ~~the~~ performance of official duties may elect to receive relief from the System in the amount of ~~66 2/3~~sixty-six-and-two-thirds percent (66 2/3%) of the member's current salary in lieu of any benefits provided in Section 3-7-41. The surviving spouse shall make such election in writing filed with the Board within ninety (90) days of receiving notice in writing from the Board of his or her right to make such election, or within one-hundred-eighty (180) days of the death of the member, whichever first occurs. In the event that the surviving spouse does not make a timely election, benefits ~~will~~shall be paid as provided under Section 3-7-41. Such election, if approved by the Board, shall become irrevocable upon commencement of payments and shall cease if such handicapped child shall become self-supporting, as determined by the Board based on standards established by the Board, or if said child is determined by the Board no longer to be permanently mentally incompetent or permanently physically handicapped based on evidence available to the Board in accordance with Section 3-7-41(b), as the case may be. Upon death of the surviving spouse, a surviving handicapped child, if any, shall be entitled to receive continued relief from the System as if that child were a surviving spouse. (20-81-3; 13-92-3; 29-09-3.)

Section 3-7-44. ~~—~~ Medical insurance benefits.

Repealed by 35-94-3.

Section 3-7-45. - Review of adverse decisions.

Any member adversely affected by a decision of the Board shall receive written notice of said decision and may, within thirty (30) days of receipt of such notice, request in writing a review by the Board of said decision, pursuant to procedures established by the Board. (20-81-3.)

Section 3-7-46. ~~—~~ Transfer to Senior Executive Retirement Plan.

Repealed by ~~26-97-26-3~~.

Section 3-7-47. ~~—~~ Masculine usage includes the feminine.

~~The masculine whenever used herein shall include the feminine. (20-81-3.)~~

Repealed by 16-\_\_-3.



Section 3-7-48. - Limitation on annual retirement allowance.

Notwithstanding any other provision of this Article, the annual retirement allowance to which any member may be entitled shall not exceed the limits on benefits set forth in Section 415(b) of the Internal Revenue Code and any regulations issued by the U.S. Department of the Treasury ~~Regulations issued~~ thereunder, and in calculating such limits a member's compensation shall include any differential wage payments for military service as defined under Section 3401(h)(2) of the Internal Revenue Code and paid on or after January 1, 2009. Notwithstanding any provision of the Internal Revenue Code to the contrary, the limitations imposed by this Section apply only to retirement allowances granted under this Article, and not to any retirement allowance provided to any employee under any other Article of this Chapter. Such limits shall be applied annually for the twelve (12-) month period commencing each July 1 and ending the following June 30. A benefit payable other than in the form of an annuity shall not exceed the amount which, when converted to an actuarial equivalent annual benefit, does not exceed the limits on benefits set forth in Section 415(b) of the Internal Revenue Code. Effective June 30, 2000, the mortality tables prescribed by the Uruguay Round Agreement Acts (GATT), as set forth in Internal Revenue Service ~~Rev. Rul.~~ Revenue Ruling 2001-62 (superseding and modifying ~~Rev. Rul.~~ Revenue Ruling 95-29), or as further updated or modified by the Internal Revenue Service, shall be used in determining the actuarial equivalent amount of such benefit. (27-90-3, § 6; 21-96-3; 8-03-3; 01-11-3.)

Section 3-7-49. - Distribution of benefits.

Notwithstanding any other provision of this Article, effective for plan years beginning after December 31, 1986, the entire interest of each member shall be distributed to such member not later than the required beginning date specified below, or ~~will~~ shall be distributed, beginning not later than the required beginning date, over the life of such member or over the lives of such member and a beneficiary or over a period not extending beyond the life expectancy of such member or the life expectancy of such member and a beneficiary. For this purpose, the term *"required beginning date"* means April 1 of the calendar year following the later of the calendar year in which the member attains age seventy-and-a-half (70½) years of age, or the calendar year in which the member retires. If a member dies after distribution of the member's interest has begun, the remaining portion, if any, of such interest shall be distributed at least as rapidly as under the method of distribution being used as of the date of death. If a member dies before the distribution of the member's interest has begun, any death benefit shall be distributed within five (5) years after the death of such member, unless (1) any portion of the member's interest is payable to (or for the benefit of) a designated beneficiary, (2) such portion ~~will~~ shall be distributed over the life of such beneficiary or over a period not extending beyond the life expectancy of such beneficiary, and (3) if the beneficiary is someone other than the member's surviving spouse, such distributions ~~will~~ shall begin not later than one (1) year after the date of the member's death or such later date as the U.S. Secretary of the Treasury may by regulations prescribe. If the beneficiary is the surviving spouse of the member, (1) distribution shall begin on or before the latest of one (1) year after the date of the member's death, such later date as the U.S. Secretary of the Treasury may by regulations prescribe, or the date on which the member would have attained seventy-and-a-half (70½) years of age ~~70½~~ and (2) if the surviving spouse dies before the distributions to such spouse begin, the distribution rules specified in this ~~paragraph~~ Section shall be applied as if the surviving spouse were the member. Distributions from the ~~system will~~ System shall be made in accordance with the requirements of Section 401(a)(9) Internal Revenue Code, including the rules for incidental death distributions set forth at Section 401(a)(9)(G). (27-90-3, § 6; 52-13-3.)

Section 3-7-50. - Direct rollovers to other plans.

- (a) General. This Section ~~3-7-50~~ applies to distributions made on or after January, 1, 1993. Notwithstanding any provision of ~~the System~~ this Article to the contrary that would otherwise limit a distributee's election under this Section ~~3-7-50~~, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. However, to the extent that any portion of the amount of the rollover is comprised of after-tax contributions, the distribution may only be rolled over to an eligible retirement plan that separately accounts for after-tax contributions.
- (b) ~~Definition.~~ Definitions.

- (1) *Eligible rollover distribution*—~~An eligible rollover distribution is~~ shall mean any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includible in gross income.
- (2) *Eligible retirement plan*—~~An eligible retirement plan is~~ shall mean any one of the following that accepts the distributee's eligible rollover distribution: an individual retirement account described in Section 408(a) of the Internal Revenue Code; an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; an annuity plan described in Section 403(a) of the Internal Revenue Code; a defined contribution plan described in Section 401(~~ka~~) of the Internal Revenue Code; an annuity contract described in Section 403(b) of the Internal Revenue Code; an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state; a qualified trust described in Section 401(a) of the Internal Revenue Code; or effective for distributions made after December 31, 2007, a Roth IRA described in Section 408A of the Internal Revenue Code, provided the eligible rollover distribution is considered a "qualified rollover contribution" under Section 408A(e) ~~of the Internal Revenue Code~~. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan ~~is~~shall be an individual retirement account or individual retirement annuity.
- (3) *Distributee*—~~A distributee includes~~ shall mean a member or former member. In addition, the member's or former member's surviving spouse and the member's or former member's spouse or former spouse who is entitled to receive benefits from the System, ~~are~~shall be distributees with regard to the interest of the spouse or former spouse. Effective for distributions on or after January 1, 2010, a distributee ~~includes~~also shall include a non-spouse beneficiary of a deceased member or former member who may make an eligible rollover distribution in a direct trustee-to-trustee transfer to an "inherited" individual retirement account.
- (4) *Direct rollover*—~~A direct rollover is~~ shall mean a payment by the System to the eligible retirement plan specified by the distributee. (45-93-3; 21-96-3; 8-03-3; 01-11-3)

Section 3-7-51. - Additional retirement allowance.

- (a) ~~For purposes of this section only, the following words and phrases shall have the following meanings:~~  
Definitions.
  - (1) *Active member* shall mean a member of ~~this~~the System who is an employee on July 1, 1995, or who became an employee thereafter, and whose membership in ~~this~~the System has not ceased at any time from July 1, 1995, forward or from when he or she became an employee (whichever is later); until the effective date of his or her subsequent retirement.
  - (2) *Retired member* shall mean a member of ~~this~~the System who is receiving a retirement allowance on July 1, 1995. ~~The term "A member of this the System who is receiving a retirement allowance" includes those members~~ shall include any member whose effective date of retirement is on or before July 1, 1995.
  - (3) *Retirement allowance* shall mean a normal service retirement allowance, an early service retirement allowance, a nonservice-connected disability retirement allowance, a deferred ~~annuity~~ under the provisions of Section 3-7-38(b) vested benefit, or a surviving spouse and children's benefit ~~under the provisions of Section 3-7-41, 3-7-42 or 3-7-43.~~
  - (4) *Base annual retirement allowance* ~~means~~shall mean the initial calculation of a member's, spouse's or children's annual retirement allowance without regard for any deductions for withholding or other benefit elections or adjustments under Section 3-7-7. For a member ~~retired pursuant to~~taking normal service retirement under Section 3-7-26(a)~~(normal service)~~, this is the



allowance calculated under Section 3-7-27(a); for a member ~~retired pursuant to taking early service retirement under~~ Section 3-7-26(b) ~~(early service)~~, this is the allowance calculated under Section 3-7-27(b); for a member retired on account of non-service-connected disability under Section 3-7-31, this is the allowance calculated under Section 3-7-31; for a member receiving a deferred ~~annuity vested benefit, this is~~ the allowance calculated under ~~the provisions of~~ Section 3-7-38(b); and for a surviving spouse and children receiving a spouse and children's benefit, this is the allowance calculated under the provisions of Section 3-7-41, 3-7-42 or 3-7-43.

- (5) *Adjusted base annual retirement allowance* shall mean the base annual retirement allowance of a retired member or of the spouse and children of a member receiving the base surviving spouse and children annual retirement allowance provided under Section 3-7-41, 3-7-42 or 3-7-43 as increased by any cost-of-living adjustments applied to the member's retirement from the effective date of his or her retirement or election of the spouse and children retirement allowance through July 1, 1995.
- (6) ~~A member is "Member in service" for purposes of this Section when he or she is~~ shall mean a member of ~~this~~ the System.
- (b) The adjusted base annual retirement allowance of each retired member or spouse and children receiving a retirement allowance on July 1, 1995, shall be increased by three percent (3%), effective July 1, 1995 (modified adjusted base annual retirement allowance). Adjustments to the retired member's or spouse and children's retirement allowance made under ~~the provisions of~~ this Article after July 1, 1995, shall be computed on the basis of the modified adjusted base retirement allowance.
- (c) When an active member retires or an eligible spouse and children elect to receive the spouse and children's retirement allowance ~~under the provisions of Section 3-7-41, 3-7-42 and 3-7-43~~ after July 1, 1995, after his or her base annual retirement allowance has been computed under ~~the provisions of~~ the applicable ~~section~~ Section of this Article, the resulting base annual retirement allowance shall be increased by three percent (3%) (initial base annual retirement allowance). ~~Future adjustments~~ Adjustments to the member's or spouse and children's retirement allowance under ~~the provisions of~~ this Article shall be computed on the basis of the initial base annual retirement allowance.
- (d) Separation from service.
- (1) A member who ~~separated;~~
- (A) Separated from service other than by death or retirement with five (5) or more years of creditable service in ~~this~~ the System prior to July 1, 1995, and ~~who has~~
- (B) Has not withdrawn his or her accumulated contributions as of July 1, 1995, and ~~who~~ subsequently
- (C) Subsequently applies for and is determined to be eligible for a deferred ~~annuity vested benefit~~ after July 1, 1995, shall have his or her deferred ~~annuity vested benefit~~ computed mutatis mutandi in the same manner as an active member under Subsection (c) of this Section. Similarly, a
- (2) A member in service on July 1, 1995, who: subsequently
- (A) Subsequently separates from service other than by death or retirement with five (5) or more years of creditable service in ~~this~~ the System ~~who does, and~~
- (B) Does not withdraw his or her accumulated contributions, and ~~who~~ subsequently
- (C) Subsequently applies for and is determined to be eligible for a deferred ~~annuity vested benefit~~, shall have his or her deferred ~~annuity vested benefit~~ determined under ~~the provisions of~~ Subsection (c) of this Section.
- (3) A member ~~who is~~ in service on July 1, 1995, who ~~subsequently;~~
- (A) Subsequently separates from service and withdraws his or her accumulated members' contributions, and ~~who thereafter~~

- (B) Thereafter returns to service and again becomes a member of ~~this~~the System and thereafter retires, shall have his or her retirement allowance calculated under ~~the provisions of~~ Subsection (c) of this Section as if he or she were an active member as defined in this ~~section~~ if and only if Section if at the time he or she subsequently returns to service, he or she has made arrangements to purchase credit for all of his or her previous service in ~~this~~the System under ~~the provisions of~~ this Article.
- (e) Notwithstanding the eighty-four percent (84%) of average final compensation limit contained in Section 3-7-27(a), the initial base annual retirement allowance of an active member who is entitled to the increase provided by Subsection (c) of this Section shall not exceed eighty-six ~~and~~ and ~~fifty-two~~ one hundredths percent (86.52%) of his or her average final compensation.
- (f) Notwithstanding any provision of this Section, ~~retirement allowances which are subject to the contrary, no adjustment under the provisions of this Section are and remain subject to shall be made which would violate~~ the limitations provided by Section 3-7-48 concerning the limitations imposed by Section 415 of the Internal Revenue Code and ~~the any U.S.~~ Treasury Regulations issued thereunder; provided, that any adjustment under this Section may be made up to those limitations. (12-95-3; 6-00-3, § 2.)

#### Section 3-7-52. - Deferred Retirement Option Program.

Effective October 1, 2003, there is hereby established a Deferred Retirement Option Program ("DROP") for eligible members of ~~this~~the System. Members of the System in service who are eligible for normal service retirement are eligible to elect to participate in this program.

- (a) Definitions.
- (1) *DROP period* ~~means~~shall mean the three- ~~(3)~~ year period immediately following the commencement of the member's participation in the DROP.
  - (2) *Eligible member* ~~means~~shall mean any member who is, or will become within sixty (60) days, eligible for normal service retirement benefits as those are defined in §Section 3-7-26(a).
- (b) Election to participate.
- (1) An eligible member may participate in the DROP only once. An eligible member who desires to participate in the DROP must file an application with the Fairfax County Retirement Administration Agency not less than sixty (60) days prior to the date of the commencement of the member's participation in the DROP.
  - (2) A member's election to participate in the DROP is irrevocable, with the exception that a member who elects to participate in the DROP may revoke that election prior to the commencement of his or her DROP period; once revoked, a member may not then elect to participate in the DROP for a period of at least twelve (12) months from the date of his or her revocation.
  - (3) At the time of an eligible member's election to participate in the DROP, he or she ~~must~~shall make an election in writing pursuant to §Section 3-7-39 as to whether or not to receive a reduced retirement allowance in order to provide a retirement allowance for his or her spouse and/or handicapped child after the member's death.
  - (4) An eligible member who elects to participate in the DROP ~~will~~shall agree to do so for a period of three (3) years.
  - (5) Subject to any limitation on the number of accrued sick leave hours that may be converted to creditable service as provided in Section 3-7-2(a)(2), an eligible member who elects to participate in the DROP shall, at the time of his or her election to participate in the DROP, make an election in writing as to whether he or she wishes to convert all of his or her available accrued sick leave to creditable service or to convert all but forty (40) hours of his or her accrued sick leave to creditable service. Sick leave that is either carried over or that accrues during the DROP period shall not be converted to creditable service at the conclusion of the DROP period.
- (c) Continued employment.

- (1) A participating DROP member shall, upon commencement of his or her DROP period, continue to work for the County in the position he or she held before the effective date of his or her election to participate in the DROP ~~program~~. Thereafter, the participating DROP member ~~will~~shall perform the services of that position or any other position to which he or she is promoted or transferred.
  - (2) A participating DROP member ~~will~~shall continue to accrue annual and sick leave and, if eligible, compensatory time during the DROP period. At the conclusion of the DROP period, the member ~~will~~shall receive the payment for his or her accrued annual and compensatory leave that he or she would have received upon retirement. In no case ~~will~~shall a participating DROP member receive payment for his or her accrued annual and compensatory leave at the commencement of the member's participation in the DROP.
  - (3) A participating DROP member ~~will~~shall continue to remain eligible for health and life insurance benefits provided by the County to its employees and ~~will~~shall remain eligible to participate in the County's deferred compensation plan. The deductions from the salary of a participating DROP member for health and life insurance ~~benefit will~~benefits shall be the same deductions that would have been taken had the participating DROP member been an active County employee, not the deductions that would be taken from the retirement benefits and allowances of a retiree.
  - (4) All County personnel policies and regulations shall continue to apply to a participating DROP member after the commencement of his or her DROP period. A participating DROP member ~~will~~shall remain eligible for annual merit pay increments and promotions during the DROP period. However, a participating DROP member's salary during his or her DROP period ~~will~~shall not be included in the computation of the member's average final compensation. A participating DROP member ~~is~~be subject to the County's disciplinary policies and regulations.
  - (5) If a participating DROP member's continued employment with ~~Fairfax~~the County is interrupted by military service, there ~~will~~shall be no interruption of the member's participation in the DROP. During the period of the participating DROP member's military service, the member's retirement benefits and allowances ~~will~~shall continue to be paid into the participating member's DROP account until the member's DROP period ends. At the end of the DROP period, the member's DROP account balance ~~will~~shall be paid to the member whether or not he or she has returned to his or her former County position, and the member ~~will~~shall begin to receive his or her normal retirement benefits.
  - (6) Except as otherwise set forth herein, a participating DROP member's continued service ~~will~~shall be deemed to be normal service retirement and ~~will~~shall not count as creditable service with the System.
  - (7) Upon commencement of a participating DROP member's DROP period, the County ~~will~~shall cease to withhold contributions to the System from the participating DROP member's salary.
  - (8) The salary received by a participating DROP member during his or her DROP period ~~will~~shall not be included by the County in the base that is used to determine the amount of the County's employer contributions to the System.
- (d) DROP account.
- (1) Upon commencement of the member's participation in the DROP, the member's service retirement allowance pursuant to §Section 3-7-27 and the additional retirement allowance pursuant to §Section 3-7-51 ~~will~~shall be paid into the member's DROP account. The initial amount credited to a member's DROP account ~~will~~shall be computed based on his or her average final compensation as of the date of the commencement of the DROP period.
  - (2) The initial monthly amount ~~will~~shall be increased each July 1 based upon the annual cost ~~of~~of living adjustment provided to retirees pursuant to §Section 3-7-37. Any other changes that occur during the DROP period that would result in an alteration of the participating DROP member's retirement ~~benefits and~~ allowances and benefits if he or she were retired ~~will~~shall also result in adjustments to the monthly amount credited to a participating DROP member's DROP account.

- (3) The participating DROP member's DROP account ~~will~~shall be credited with interest at an annual rate of five percent (5%), compounded monthly. Interest ~~will~~shall not be pro-rated for any period less than a full month.
  - (4) Contributions by the County and the participating DROP member into the System for the participating DROP member ~~will~~shall cease.
  - (5) Amounts credited to a participating DROP member's DROP account ~~will~~shall not constitute annual additions under ~~26 U.S.C. § 415~~Section 415 of the Internal Revenue Code.
  - (6) A participating DROP member's DROP account ~~will~~shall not be an account that is separate and distinct from the assets of the System; a participating DROP member's DROP account balance ~~will~~shall remain part of the assets of the System.
- (e) Cessation of County employment.
- (1) At the conclusion of a participating DROP member's DROP period, the member's County employment ~~will~~shall automatically cease. The participating DROP member shall then begin to receive normal service retirement ~~benefits and~~ allowances and benefits computed based upon his or her average final compensation at the time of the commencement of the DROP period and his or her creditable service at the time of the commencement of the DROP period, plus cost ~~of~~ living increases provided to retirees and any other benefit improvements that may have been granted to retirees during the participating DROP member's DROP period. At least sixty (60) days prior to the conclusion of a participating DROP member's DROP period, the member ~~must~~shall make one of the following elections concerning payment of his or her DROP account balance:
    - (A) The member may receive payment of his or her DROP account balance as a lump sum.
    - (B) The member may elect to roll over his or her DROP account balance into an "eligible retirement plan", as defined in Section 3-7-50(b)(2).
    - (C) The member may elect to receive payment of a portion of his or her DROP account balance and roll over the remaining portion into a qualified retirement plan, such as an IRA. If the member elects this method of receiving his or her DROP account balance, he or she must specify, in writing, the specific amount to be paid as a lump sum and the specific amount to be rolled over.
    - (D) The member may elect to use his or her DROP account balance to increase his or her monthly retirement ~~benefits and~~ allowances and benefits. The amount of the increase ~~will~~shall be determined based on the actuarial equivalent of the member's DROP account balance.
    - (E) The member may divide his or her DROP account balance in half, and may then elect to use ~~50~~fifty percent (50%) of his or her DROP account balance to increase his or her monthly retirement ~~benefits and~~ allowances and benefits, and to receive the remainder in any manner listed in ~~paragraphs~~Subparagraphs (A), (B) and (C) above.

In the event that the participating DROP member does not make the election required by this ~~section~~Subsection, the member ~~will~~shall receive payment of his or her DROP account balance as a lump sum.
  - (2) A participating DROP member may terminate his or her County employment at any time, in which case the effective date of the member's termination of his or her County employment shall be treated as the end of the DROP period for ~~the provisions~~all purposes of this ~~section~~Section.
  - (3) In the event that the employment of a participating DROP member is terminated by the County during the DROP period for any reason, the effective date of the member's separation from County service shall be treated as the end of the DROP period for all purposes of this Section.
- (f) Death or disability during DROP period.

- (1) (A) If a participating DROP member dies during the DROP period, the participating DROP member's designated beneficiary on record with the System shall receive payment of the member's DROP account balance and the member's accumulated contributions; if there is no designated beneficiary on record with the System, payment of these amounts shall be made to the participating DROP member's estate. In the event that the participating DROP member has elected a joint and contingent spouse and handicapped child option pursuant to the terms of [§Section 3-7-39](#), the participating DROP member's surviving spouse or handicapped child ~~will~~[shall](#) receive payment of the participating DROP member's DROP account balance and ~~will~~[shall](#) begin to receive ~~benefits and~~ allowances [and benefits](#) pursuant to the joint and contingent spouse and handicapped child option election of the participating DROP member in addition to the benefits to which they may be entitled under [§Section 3-7-41](#).
- (B) If a participating DROP member is killed while in performance of his or her official duties during the DROP period, as set forth in [§Section 3-7-43](#), the member's spouse, or, if there is no surviving spouse, the member's handicapped child, may elect to receive the benefits set forth in [§Section 3-7-43](#), pursuant to the terms and conditions set forth in that ~~section~~[Section](#). Such an election ~~will~~[shall](#) constitute a waiver of the right to receive the participating DROP member's DROP account balance.
- (C) If a participating DROP member is killed while in performance of his or her official duties and there is no surviving spouse or handicapped child, the member's designated beneficiary on record with the System shall receive payment of the member's DROP account balance and the member's accumulated contributions; if there is no designated beneficiary on record with the System, payment of these amounts shall be made to the participating DROP member's estate.
- (2) If a participating DROP member becomes disabled during the DROP period, the participating DROP member ~~will~~[shall](#) receive:
  - (A) In the case that a participating DROP member suffers a disability that would be considered ~~an ordinary~~ [a non-service-connected](#) disability as defined in [§Section 3-7-31](#) ~~and or~~ [a disability as a result of negligence as defined in Section 3-7-36](#), the effective date of the member's disability ~~will~~[shall](#) be treated as the end of the participating DROP member's DROP period.
  - (B) In the case that a participating DROP member suffers a service-connected disability as ~~set forth~~[defined](#) in [§Section 3-7-28](#), the participating DROP member may elect either (i) to receive the service-connected disability retirement ~~benefits and~~ allowances [and benefits](#) to which he or she would otherwise be entitled or (ii) to receive the normal service retirement ~~benefits and~~ allowances [and benefits](#) to which he or she would be entitled plus his or her DROP account balance. An election to receive service-connected disability retirement ~~benefits and~~ allowances ~~or severe service-connected disability retirement~~[and](#) benefits shall constitute a waiver of the member's right to receive any amounts credited to his or her DROP account balance.
- (g) Execution of documents and adoption of rules and regulations. The County Executive is authorized to execute all documents necessary or appropriate to operate the DROP including, but not limited to, the establishment of a trust within which the participating DROP members' DROP accounts shall be held and administered. The Board ~~of Trustees~~ is also authorized to adopt rules and regulations governing the DROP. Any documents executed by the County Executive shall be approved for form by the County Attorney prior to execution. (36-03-3; 41-08-3; 27-10-3; 01-11-3; 28-12-3.)

Division 7. - Benefit Restoration Plan.

Section 3-7-53. - Benefit Restoration Plan.

- (a) There is hereby established a Benefit Restoration Plan for the System.



(b) Purpose and intent; rule of construction.

- (1) In establishing this Benefit Restoration Plan, the Board of Supervisors intends to establish and maintain a "qualified governmental excess benefit arrangement," as defined and authorized by Section 415(m) of the federal Internal Revenue Code ~~Section 415(m), 26 U. S. C. Section 415(m)~~, as is permitted by ~~Va. Code Ann.~~ Section 51.1-~~1302~~ 1302 of the Code of Virginia. The purpose of this Benefit Restoration Plan is to restore, through a non-qualified arrangement, the benefits lost by the application of the limitation on annual benefits under Section 415(b) of the Internal Revenue Code ~~Section 415(b)~~ as applicable to governmental plans. This Benefit Restoration Plan shall exist in addition to all other retirement, pension, or other benefits available to ~~Participants~~ participants, including the benefits established by ~~this~~ the System.
- (2) This ~~section~~ Section shall be construed to ensure compliance with ~~the provisions of~~ federal and state law, and any regulations promulgated thereunder, governing such qualified governmental excess benefit arrangements, including, but not limited to Section 415(m) of the Internal Revenue Code ~~Section 415(m)~~ and ~~Va. Code Ann.~~ Sections 51.1-1302, 51.1-1303, and 51.1-~~1304~~ 1304 of the Code of Virginia, as in effect at the time of the adoption of this ~~section~~ Section and as subsequently amended.

(c) Definitions.

- (1) *Administrator or Plan Administrator* shall mean the Board ~~of Trustees of the Police Officers Retirement System~~, which is responsible for the general administration and operation of the Benefit Restoration Plan and for making effective the provisions of this Section. Under the oversight of the Board ~~of Trustees~~, the Executive Director ~~of the Retirement Administration Agency~~ shall be responsible for the day to day operation and administration of the Benefit Restoration Plan.
- (2) *Beneficiary* shall mean the person or persons entitled under ~~the provisions of~~ this Article ~~governing this System~~ to receive any benefits payable after the ~~Participant~~ participant's death.
- (3) ~~Board~~ Benefit Restoration Plan or Plan shall mean the ~~Board of Trustees of the Police Officers Retirement~~ Benefit Restoration Plan for the System established ~~underby~~ this Article ~~Section~~.
- (4) ~~Internal Revenue Code~~ means the federal Internal Revenue Code, as the same may be amended from time to time, and, to the extent not inconsistent therewith, regulations issued there under. (5) ~~Effective Date. The effective date shall mean the~~ date of this ~~section is its date of~~ Section's adoption [June 5, 2006].
- (6) ~~5) Eligible Member~~ member shall mean a retired member of the ~~Police Officers Retirement System~~ and whose benefits thereunder are reduced by the application of the limitations on annual benefits under Section 415(b) of the Internal Revenue Code ~~Section 415(b)~~ as applicable to governmental plans.
- (7) ~~Member shall mean a member of the Police Officers Retirement System established under this Article.~~
- (8) ~~Employer shall mean an employer as defined under the Police Officers Retirement System established under this Article. (9) Enabling statute shall mean Chapter 13 of Title 51.1 of the Code of Virginia Code (1950), as amended.~~
- (10) ~~Grantor Trust~~ trust shall mean the trust fund described in ~~subsection~~ Subsection (i)(3) of this Section and established and maintained for the Benefit Restoration Plan.
- (11) ~~Participant~~ shall mean an ~~Eligible Member~~ eligible member qualified to participate in the Benefit Restoration Plan.
- (12) ~~Benefit Restoration Plan or Plan shall mean the Benefit Restoration Plan for the System established by this Section. (13) Plan Sponsor~~ Plan sponsor shall mean the Board of Supervisors ~~of Fairfax County, Virginia.~~
- (14) ~~10) Plan Year~~ year shall mean the twelve (12-) month period beginning on ~~the first day of July.~~ 1.

- (~~45~~11) ~~Restoration Death—Benefit~~death benefit shall mean the benefit due the ~~Beneficiary~~beneficiary of a ~~Participant~~participant under the Benefit Restoration Plan as determined under this Section.
- (~~46~~12) ~~Restoration Retirement—Benefit~~retirement benefit shall mean the benefit due a ~~Participant~~participant or his or her ~~Beneficiary~~beneficiary under the Benefit Restoration Plan determined under this Section.
- ~~(17) Retirement System or System shall mean the Police Officers Retirement System established under this Article.~~
- (d) Eligibility and ~~Participation~~participation
- (1) Eligibility and ~~Date~~date of ~~Participation~~participation. Each ~~Eligible Member~~eligible member shall be a ~~Participant~~participant in ~~this~~the Benefit Restoration Plan commencing with the date he or she first becomes, or again becomes, an ~~Eligible Member~~eligible member.
  - (2) Length of ~~Participation~~participation. Each ~~Eligible Member~~eligible member who becomes a ~~Participant~~participant shall be or remain a ~~Participant~~participant for so long as he or she is entitled to future benefits under the terms of ~~this~~the Benefit Restoration Plan.
- (e) Restoration ~~Retirement Benefit~~~~(1)~~retirement benefit. Subject to the terms and conditions set forth in this Section, a ~~Participant~~participant who retires or is retired under the System and who is entitled to the payment of benefits under the System shall be entitled to a ~~Restoration Retirement Benefit~~restoration retirement benefit, generally expressed as a benefit payable monthly for the life of the ~~Participant~~participant and commencing at the applicable time provided under this Article, equal to the excess, if any, of:
- (~~i~~1) The amount of the ~~Participant~~participant's retirement allowance under the ~~Retirement~~ System, determined without regard to the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, over
  - (~~ii~~2) The amount of the ~~Participant~~participant's retirement allowance under the ~~Retirement~~ System.
- To the extent that the ~~Participant~~participant's retirement allowance payable under the ~~Retirement~~ System is increased at any time due to increases in limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, whether by statute, regulation, actions of the Secretary of the U. S. Treasury or his or her delegate or otherwise, the ~~Participant's Restoration Retirement Benefit~~participant's restoration retirement benefit shall be reduced correspondingly.
- (f) Death Benefit.
- (1) Death after ~~Benefit Commencement~~benefit commencement. If a ~~Participant~~participant dies after his or her ~~Restoration Retirement Benefit~~restoration retirement benefit commences to be paid, the only benefits payable under the Benefit Restoration Plan to his or her ~~Beneficiary~~beneficiary after his or her death shall be those, if any, provided under the form of payment being made to him or her at his or her death.
  - (2) Death before ~~Benefit Commencement~~benefit commencement. If a ~~Participant~~participant dies before his or her ~~Restoration Retirement Benefit~~restoration retirement benefit commences to be paid, the only benefit payable under the Benefit Restoration Plan with respect to him or her shall be the ~~Restoration—Death—Benefit~~restoration death benefit, if any, provided in ~~sub-section~~Subsection (~~f~~)(3) of this Section.
  - (3) Restoration ~~Death Benefit~~death benefit. Subject to the terms and conditions set forth herein, if a ~~Participant~~participant dies on or after the ~~Effective Date~~effective date and before his or her ~~Restoration Retirement Benefit~~restoration retirement benefit commences to be paid, his or her ~~Beneficiary~~beneficiary shall be entitled to a ~~Restoration Death Benefit~~restoration death benefit as follows:
    - (A) If his or her ~~Beneficiary~~beneficiary is entitled to receive any death benefit under the ~~Retirement~~ System, such ~~Beneficiary~~beneficiary shall be entitled to receive as a ~~Restoration~~

~~Death Benefit~~restoration death benefit under the Benefit Restoration Plan an amount equal to the excess, if any, of:

- (i) The amount of such death benefit under the ~~Retirement~~ System, determined without regard to the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, over
- (ii) The actual amount of such death benefit under the ~~Retirement~~ System.

To the extent that the ~~Participant~~participant's accrued benefit or any death benefit payable under the ~~Retirement~~ System is increased at any time due to increases in the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, whether by statute, ~~regulations~~regulation, actions of the U.S. Secretary of the Treasury or his or her delegate or otherwise, the ~~Participant's Restoration Death Benefit~~participant's restoration death benefit shall be reduced correspondingly.

- (g) Vesting. ~~(1) ——— Vesting. A Participant's Restoration Retirement Benefit or Restoration Death Benefit~~A participant's restoration retirement benefit or restoration death benefit, as the case may be, shall be vested at the time of his or her retirement under the ~~Retirement~~ System or death, but only to the extent, and determined in the manner, that such ~~Participant~~participant has a vested and non-forfeitable right to his or her retirement allowance under the ~~Retirement~~ System.
- (h) Payment of ~~Benefits~~benefits.
  - (1) Time and ~~Manner~~manner for ~~Payment~~payment of ~~Benefits. A Participant's Restoration Retirement Benefit, or the Restoration Death Benefit~~benefits. A participant's restoration retirement benefit, or the restoration death benefit, shall be payable at the same time and in the same manner as the ~~Participant~~participant's retirement allowance or comparable death benefit (other than his or her accumulated contributions or contribution refund death benefit) is paid under the ~~Retirement~~ System, whether as elected by the ~~Participant~~participant or otherwise payable. For a ~~Member~~member who is receiving a retirement allowance under the System on the ~~Effective Date~~effective date, and who would immediately be an ~~Eligible Member~~eligible member upon the ~~Effective Date~~effective date, such ~~Member~~member shall immediately commence receiving a ~~Restoration Retirement Benefit~~restoration retirement benefit on a prospective basis.
  - (2) Discretionary ~~Use of Other Methods of Payment~~use of other methods of payment. In the sole discretion of the Administrator, monthly payment amounts of less than \$100.00, or such amount as the Administrator may from time to time determine, may be paid on an annual or semi-annual basis, in arrears and without interest.
  - (3) Benefit ~~Determination~~determination and ~~Payment Procedure~~payment procedure. The Administrator shall make all determinations concerning eligibility for benefits under the Benefit Restoration Plan, the time or terms of payment, and the form or manner of payment to the ~~Participant~~participant (or the ~~Participant's Beneficiary~~participant's beneficiary in the event of the death of the ~~Participant~~participant). The Administrator shall promptly notify the ~~Employer~~employer and, where payments are to be made from a ~~Grantor Trust~~grantor trust, the trustee thereof, of each such determination that benefit payments are due and provide to the ~~Employer~~employer or trustee such other information necessary to allow the ~~Employer~~employer or trustee to carry out said determination, whereupon the ~~Employer~~employer or trustee shall pay such benefits in accordance with the Administrator's determination.
  - (4) Payments to ~~Minors~~minors and ~~Incompetents. If a Participant or Beneficiary~~incompetents. If a participant or beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits ~~will~~shall be paid to such person as the Administrator may designate for the benefit of such ~~Participant or Beneficiary~~participant or beneficiary. Such payments shall be considered a payment to such ~~Participant or Beneficiary~~participant or beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Benefit Restoration Plan.



- (5) Distribution of ~~Benefit When Distributee Cannot Be Located~~benefit when distributee cannot be located. The Administrator shall make all reasonable attempts to determine the identity and/or whereabouts of a ~~Participant~~participant or his or her ~~Beneficiary~~beneficiary entitled to benefits under the Benefit Restoration Plan, including the mailing by certified mail of a notice to the last known address shown on the ~~Employer~~employer's or the Administrator's records. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no such claim made for such benefits, the ~~Employer~~employer shall continue to hold the benefit due such person, subject to any applicable statute of escheats.
- (i) Funding.
- (1) The undertaking to pay the benefits hereunder shall be unfunded obligations payable solely from the general assets of the ~~Employer~~employer and subject to the claims of the ~~Employer~~employer's creditors.
  - (2) Except as provided in a ~~Grantor Trust~~grantor trust established as permitted in ~~sub-section~~Subsection (i)(3) ~~of this Section~~, nothing contained in the Benefit Restoration Plan and no action taken pursuant to ~~the provisions of~~ this Section shall create or be construed to create a trust of any kind of a fiduciary relationship between the ~~Employer~~employer and the ~~Participant~~participant or his or her ~~Beneficiary~~beneficiary or any other person or to give any ~~Participant or Beneficiary~~participant or beneficiary any right, title, or interest in any specific asset or assets of the ~~Employer~~employer. To the extent that any person acquires a right to receive payments from the ~~Employer~~employer under the Benefit Restoration Plan, such rights shall be no greater than the right of any unsecured general creditor of the ~~Employer~~employer.
  - (3) Use of ~~Grantor Trust Permitted~~grantor trust permitted. Notwithstanding any provision of this Section to the contrary, the Benefit Restoration Plan Sponsor may in its sole discretion elect to establish and fund a ~~Grantor Trust~~grantor trust for the purpose of providing benefits under the Benefit Restoration Plan.
- (j) Plan Administrator.
- (1) The Plan Administrator ~~has~~shall have full and complete authority and discretion to control and manage the operation of and shall decide all matters under the Benefit Restoration Plan pursuant to this Section and the ~~Enabling Statute~~enabling statute. The Administrator ~~has~~shall have any and all powers as may be necessary or advisable to discharge its duties under the Benefit Restoration Plan including the power and authority to interpret the terms of the Benefit Restoration Plan.
  - (2) The Plan Administrator ~~is~~shall be responsible for performing the duties required for the operation of the Benefit Restoration Plan, and ~~is~~shall be responsible for supervising the performance of any other persons who may assist in the performance of the Plan Administrator's responsibilities under this Section and the ~~Enabling Statute~~enabling statute.
  - (3) To enable the Plan Administrator to perform its responsibilities, ~~Employer~~employer(s) shall promptly provide to the Plan Administrator complete and accurate information on any matter that is required by the Administrator in order to make any decision or determination under the Benefit Restoration Plan. The Plan Administrator shall rely upon this information supplied by the ~~Employer~~employer, and shall have no duty or responsibility to verify this information.
  - (4) Except as prohibited by law or by this Section, the Plan Administrator may delegate any of its duties to the Executive Director ~~of the Retirement Administration Agency~~. The Plan Administrator may contract with any person to provide services to assist in the administration of the Benefit Restoration Plan. The Plan Administrator ~~must~~shall make such contracts in compliance with all applicable ~~State~~state and local laws and regulations. Any person other than the Plan Administrator who performs services regarding the Benefit Restoration Plan ~~is~~shall be subject to the supervision and direction of the Plan Administrator, and ~~does~~shall not have the authority to control the operation of the Plan.
- (k) Termination and ~~Amendment~~amendment of ~~the~~ Benefit Restoration Plan.

- (1) ~~Termination of the Benefit Restoration Plan.~~ The Board of Supervisors ~~of the County of Fairfax, Virginia,~~ hereby reserves the right to terminate this Benefit Restoration Plan at any time; provided, that no such termination shall reduce, suspend, or terminate the ~~Restoration Retirement Benefit or Restoration Death Benefit~~restoration retirement benefit or restoration death benefit otherwise payable to a ~~Participant or Beneficiary~~participant or beneficiary hereunder as of the date of such termination.
- (2) ~~Amendment of the Benefit Restoration Plan.~~ The Board of Supervisors ~~of the County of Fairfax, Virginia,~~ hereby reserves the right to amend this Benefit Restoration Plan at any time; provided, that no such amendment shall reduce, suspend, or terminate the ~~Restoration Retirement Benefit or Restoration Death Benefit~~restoration retirement benefit or restoration death benefit otherwise payable to a ~~Participant or Beneficiary~~participant or beneficiary hereunder as of the date of such ~~termination~~amendment.
- (l) ~~Miscellaneous. (1)~~ Non-assignability.
- The interests of each ~~Participant~~participant hereunder the Benefit Restoration Plan are not subject to the claims of the ~~Participant~~participant's creditors; and neither the ~~Participant~~participant nor his ~~Beneficiary or her beneficiary~~, shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Benefit Restoration Plan, which payments and interest are expressly declared to be non-assignable and non-transferable. ~~(2)~~ Notwithstanding the ~~preceding sub-section~~foregoing, the Plan Administrator shall honor any process for a debt to the ~~Employer~~employer who has employed the ~~Participant~~participant and any administrative actions pursuant to ~~Va. Code Ann. Sections 63.2-1900, 1900 et seq., of the Code of Virginia~~ or any court process to enforce a child or spousal support obligation, in the manner as described in Section 3-7-6 ~~of this Article~~ mutatis mutandi. ~~Restoration Retirement Benefits and/or Restoration Death Benefits~~retirement benefits and/or restoration death benefits created under this Section which are deemed to be marital property pursuant to ~~Va. Code Ann. Sections 20-89.1, 89.1 et seq. of the Code of Virginia~~, may be divided or transferred by the court by direct assignment to a spouse or former spouse pursuant to ~~Va. Code Ann. Section 20-107.3, 107.3 of the Code of Virginia~~. Under no circumstances may a payment under this ~~sub-section~~Subsection take place before the ~~Participant~~participant's benefit under the ~~Retirement~~ System is actually paid. (12-06-3.)

Board Agenda Item  
January 12, 2016

TO BE DEFERRED

4:30 p.m.

Public Hearing on SE 2015-MV-003 (First Years Learning Center LLC / Claudia Tramontana) to Permit a Home Child Care Facility, Located on Approximately 10,488 Square Feet of Land Zoned PDH-2 (Mount Vernon District)

This property is located at 6614 Winstead Manor Court, Lorton, 22079. Tax Map 99-2 ((17)) 34.

On June 23, 2015, the Board of Supervisors deferred this public hearing to July 28, 2015, at 3:00 p.m.; at which time it was deferred to September 22, 2015 at 3:00 p.m.; and, then was deferred to October 6, 2015 at 3:00 p.m.; at which time it was deferred to October 20, 2015 at 5:30 p.m.; and then was deferred once more to January 12, 2016.

PLANNING COMMISSION RECOMMENDATION:

On Wednesday, July 22, 2015, the Planning Commission voted 10-0 (Commissioners Lawrence and Migliaccio were absent from the meeting) to recommend to the Board of Supervisors approval of SE 2015-MV-003, subject to the development conditions dated July 21, 2015.

ENCLOSED DOCUMENTS:

Attachment 1: Planning Commission Verbatim Excerpt  
Staff Report previously furnished and available online at:  
<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4488469.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)  
Mary Ann Tsai, Planner, DPZ

SE 2015-MV-003 - FIRST YEARS LEARNING CENTER LLC/CLAUDIA TRAMONTANA

During Commission Matters

Commissioner Flanagan: Mr. Chairman. I have a decision only tonight, SE 2015-MV-003 First Years Learning Center, and I request that the applicant, come forward to the lectern and confirm for the record, agreement to the proposed development conditions now dated July 21, 2015, with two changes – recent changes - to the conditions and with the inclusion of the following language to condition one, which restricts the special exception approval to the applicant only. Do you agree with the conditions?

Lawrence McClafferty, Applicant's Agent, McCandlish & Lillard, PC: Mr. Flanagan and Mr. Chairman and members of the Commission, we hereby agree with that additional condition.

Commissioner Flanagan: Thank you.

Chairman Murphy: Sir, identify yourself for the record please, just to make it –

Mr. McClafferty: Lawrence McClafferty, of McCandlish & Lillard, here on behalf of the applicant, First Years Learning Center, LLC and Claudia Tramontana.

Chairman Murphy: Thank you very much, Mr. Flanagan.

Commissioner Flanagan: The conditions, are we on – verbatim?

Chairman Murphy: Yes.

Commissioner Flanagan: - okay, the conditions, number one that I refer to, was passed out to all the Commissioners in the handouts so you should all have that text, I will repeat it here. But based upon public testimony not previously available to staff and the applicant's willingness to achieve neighborhood harmony by amending staff's conditions so as to improve pipestem traffic and parking by eventually reducing the number of children on the site from 12 to 9. Second, improve playground safety by adding play equipment ground cover and fencing as recommended by Commissioners Strandlie and Hedetniemi and limiting the SE to the applicant rather than the site, as we are doing this evening. I therefore Mr. Chairman, MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF SE 2015-MV-003, SUBJECT TO THE DEVELOPMENT CONDITIONS NOW DATED JULY 21, 2015.

Commissioner Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Litzenberger.

Commissioner Sargeant: Mr. Chairman.

Chairman Murphy: Is there a discussion of the motion?

Commissioner Sargeant: Mr. Chairman.

Chairman Murphy: Mr. Sargeant.

Commissioner Sargeant: I was not present for the public hearing however, I have reviewed the information and also the video recording of the public testimony and I intend to vote.

Chairman Murphy: Further discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SE 2015-MV-003, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

//

(The motion carried by a vote of 10-0. Commissioner Lawrence and Migliaccio absent from the meeting.)

TMW

Board Agenda Item  
January 16, 2016

4:30 p.m.

Public Hearing on RZ 2010-PR-022 (TMG Solutions Plaza Land L.P.) to Rezone from C-4, SC and HC to PTC, SC and HC to Permit Mixed Use Development with an Overall Floor Area Ratio up to 5.33 and Approval of the Conceptual and Final Development Plans, Located on Approximately 18.10 Acres of Land (Providence District)

This property is located in the South West Quadrant of the Intersection of Westpark Drive and Greensboro Drive and North of Solutions Drive. Tax Map 29-3 ((15)) 4D1, 4E1, 4F1, 4G, 7A1, 7B1, 7C1, and 7E1.

This public hearing was deferred to January 16, 2016 at 4:30 p.m. by the Board of Supervisors at the October 20, 2015 meeting.

PLANNING COMMISSION RECOMMENDATION:

On Wednesday, October 7, 2015, the Planning Commission voted 10-0 (Commissioners Lawrence and Litzenberger were absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of RZ 2010-PR-022, subject to the Proffers now dated October 5, 2015;
- Approval of a waiver of Section 2-505 of the Zoning Ordinance (ZO) to permit structures and vegetation on a corner lot as shown on the CDP/FDP;
- Approval of a modification of Section 2-506 of the ZO to allow for a parapet wall, cornice or similar projection to exceed the height limit established by more than three (3) feet as may be indicated on the FDP to screen mechanical equipment;
- Approval of a modification of Paragraph 3E of Section 10-104 of the ZO, which limits fence height to seven feet, to permit a maximum fence height of 14 feet around outdoor recreational courts and fields shown on an FDP;
- Approval of a modification of Paragraph 4 of Section 11-202 of the ZO requiring a minimum distance of 40 feet of a loading space in proximity to drive aisles, to that shown on the CDP/FDP;
- Approval of a waiver of Section 11-302 of the ZO to allow a private street to exceed 600 feet in length as shown on the CDP;

Board Agenda Item  
January 16, 2016

- Approval of a waiver of Paragraph 8 of Section 13-202 of the ZO to modify the peripheral landscaping requirements for the interim surface parking lots to that which are shown on the CDP/FDP;
- Approval of a waiver of Paragraph 5 of Section 13-203 of the ZO to modify the peripheral landscaping requirements for the surface parking lots that will remain on an interim basis to that which are shown on the CDP/FDP;
- Approval of a waiver of Section 16-403 of the ZO in order to permit a public improvement plan for public streets and park spaces without the need for an FDP;
- Approval of a waiver of Section 17-201 of the ZO, to not require the provision of a service road along Leesburg Pike;
- Approval of a modification of Section 17-201 of the ZO to permit the streetscape and on-road bike lane system shown on the CDP/FDP in place of any trails and bike trails shown for the subject property on the Comprehensive Plan;
- Approval of a waiver of Paragraph 3 of Section 17-201 of the ZO to provide any additional interparcel connections to adjacent parcels beyond that shown on the CDP/FDP and as proffered;
- Approval of a waiver of Paragraph 4 of Section 17-201 of the ZO to not require further dedication, construction, or widening of existing roads beyond that which is indicated on the CDP/FDP and proffers;
- Approval of a waiver of Paragraph 7 of Section 17-201 of the ZO to permit the applicant to establish parking control signs and parking meters along private streets within and adjacent to the development;
- Approval of a modification of Section 12-0508 of the PFM to allow for tree preservation target deviations as justified by PFM 12-0508.3A(1) and 3A(3); and
- Approval of a modification of Section 12-0510 of the PFM to permit trees located in rights-of-way and easements to count toward the 10-year tree canopy requirement subject to the proffered replacement provisions.

In a related action, on Wednesday, October 7, 2015, the Planning Commission voted 10-0 (Commissioners Lawrence and Litzenberger were absent from the meeting) to approve FDP 2010-PR-022, subject to the Development Conditions dated September 9, 2015, and subject to the Board's approval of RZ 2010-PR-022.

Board Agenda Item  
January 16, 2016

ENCLOSED DOCUMENTS:

Attachment 1: Planning Commission Verbatim Excerpt  
Staff Report previously furnished and available online at:  
<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4500258.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ),  
Bob Katai, Planner, DPZ



RZ/FDP 2010-PR-022 – TMG SOLUTIONS PLAZA LAND LP

Decision Only During Commission Matters

Commissioner Hart: Thank you, Mr. Chairman. On September 24, the Planning Commission held a public hearing on a combined rezoning and final development plan application by TMG Solutions Plaza Land LP, on approximately 18 acres of land at the Greensboro Metro station on the Silver Line in the Providence District. We deferred decision until tonight to work on proffer wording, principally regarding the library, and also to consider citizen objections. We are basically ready, subject to two minor issues staff has mentioned, which will be fine tuned before this gets to the Board on the 20<sup>th</sup>; but to still maintain a 2015 Board date, we need to move forward tonight. The application had been pending for five years and represents the culmination of many discussions between the applicant, county staff, Supervisor Smyth's office, and the community. Once again, I am pinch hitting for Commissioner Lawrence; I only got involved earlier this year. I want to thank staff, particularly Bobby Katai, Cathy Lewis, and Tracy Strunk, as well as Mike Wing in Supervisor Smyth's office, for their assistance. I also want to thank Commissioner Lawrence for his analysis and thoughts and, finally, the applicant and Elizabeth Baker for their willingness to work with us. This application represents the type of dynamic mixed-use development Fairfax County wants to promote around Metro stations, including both residential and office together, a retail district including a full size grocery store for which Whole Foods will be the tenant and a cinema complex, as well as a public library, public park spaces, an offsite athletic field, and other significant commitments. The application has received a thorough vetting and has staff's support. The McLean Citizens Association, however, opposes the application on the basis that the heights proposed for the – for three buildings are not in conformance with the adopted Comprehensive Plan. That issue was the most difficult aspect of this case. I have carefully considered both staff's position and that of the MCA. I have concluded that the application deserves our favorable recommendation for the reasons stated in the staff report. I would add the following observations: I do not view the height recommendations in the Comprehensive Plan as a rigid template, and every application is viewed individually. Working around existing structures and infrastructure may require some flexibility. This site has varied topography to begin with, including some of the highest ground in Tysons. Significantly, the Board of Supervisors already approved the Dittmar application on the adjacent property to the immediate west, somewhat further from the station, which building also exceeded the height recommendation in the Plan. Significantly also, this applicant is proposing to retain three existing office buildings at a much lower height, which are still in good condition but which occupy the portion of the site closest to the station. The three buildings to which the MCA objects are located further away from the station than the lower existing buildings but closer than the Dittmar site. To retain the existing office but achieve the contemplated intensity desirable at a Metro station requires some relocation of the intensity to the west of the ring on the Plan and in the direction of the Dittmar site. Stated another way, retaining the existing buildings requires that the new buildings be slightly further away from the station than if the site were vacant. The applicant's proposed configuration represents, in my view, a logical shift or displacement of the intensity contemplated at a rail station, rather than disregarding the Comprehensive Plan guidance. The Comprehensive Plan is a guide. The Board of Supervisors retains the flexibility to evaluate each application on its merits and on some sites we may conclude that the ring-shaped

height recommendations in the Plan do not require a strict wedding cake tiered ring. To the contrary, we want to encourage variety and an interesting skyline in Tysons. Here also, the orientation and massing of the buildings has been carefully handled. The building designs, in relation to the integrity of the project, further support staff's conclusion. The lower stories form a podium, but the taller towers are stepped back and not immediately apparent at sidewalk level. The taller buildings are both visually separated and oriented to different axes so that windows are not facing directly into other windows. The stepping back of the buildings from the street also avoids the effect of a barrier wall or canyon and helps integrate the project into its context. The design also incorporates a proposed street grid and a well planned pedestrian system. At Commissioner Lawrence's request, I am noting also that if this proposal is approved, the plan intensity close to the Metro station will be met and, if in the future the existing buildings are to be redeveloped, their designs will need to take into account what we have done on this approval. The applicant is not getting more intensity through this approval, they are getting slightly reconfigured intensity. The Comprehensive Plan recognizes that projects are not going to be identical and that building design and height will not be uniform. Harmony also does not require the entire orchestra to be playing the same note. Here on this site, given the existing buildings, the prior approval of the taller building to the west, and the site constraints, I agree with staff's conclusion about the height issue and am satisfied that the proposal is in harmony with the adopted Comprehensive Plan. Following the public hearing, the applicant has revised the library proffer, with detailed changes distributed yesterday, found on pages 58 through 67 of the latest proffers. The applicant also has committed to construct a pedestrian bridge to the Metro station, significantly improving access to the library, and the recreational amenities in Energy Park. The applicant also has a revised proffer regarding flexibility for office space above the street level retail uses, but within the overall cap for office space, which may allow what is known as office loft spaces in this interesting mix. Staff is supportive of all these changes to the proffers. With the resolution of the proffer wording issues, pending two minor details still being fine tuned, and the foregoing analysis of the height issue, I believe, as does staff, that the applications are ready to move forward. At this time, I request the applicant to confirm for the record its agreement to the proposed development conditions, dated September 9, 2015.

Elizabeth Baker, Senior Land Use Coordinator, Walsh, Colucci, Lubeley & Walsh PC: Good evening. I'm Elizabeth Baker with Walsh, Colucci and I do agree that the applicant is accepting of those development conditions.

Commissioner Hart: And Ms. baker, if you also could please confirm that the applicant will continue to work with staff on the two library proffer details the Mr. Katai discussed before this gets to the Board.

Ms. Baker: Absolutely, we will continue to, and I don't imagine there will be any problem resolving those.

Commissioner Hart: Thank you. Therefore, Mr. Chairman, I will have three motions: First, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF RZ 2010-PR-022, SUBJECT TO THE PROFFERS NOW DATED OCTOBER 5, 2015.

Commissioners Sargeant and Ulfelder: Second.

Chairman Murphy: Seconded by Mr. Sargeant and Mr. Ulfelder. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve RZ 2010-PR-022, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Mr. Hart.

Commissioner Hart: Second, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION APPROVE FDP 2010-PR-022, SUBJECT TO THE DEVELOPMENT CONDITIONS DATED SEPTEMBER 9, 2015, AND SUBJECT TO THE BOARD'S APPROVAL OF RZ 2010-PR-022.

Commissioners Sargeant and Ulfelder: Second.

Chairman Murphy: Same seconds. Is there a discussion of the motion? All those in favor of the motion to approve FDP 2010-PR-022, subject to the Board's approval of the rezoning, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Mr. Hart.

Commissioner Hart: Finally, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF THE MODIFICATIONS AND WAIVERS, AS LISTED ON THE HANDOUT DATED SEPTEMBER 9, 2015, THAT WAS PROVIDED TO YOU PREVIOUSLY AND MADE A PART OF THE RECORD OF THIS CASE.

Commissioners Sargeant and Ulfelder: Second.

Chairman Murphy: Seconded by Mr. Sargeant and Mr. Ulfelder. Discussion? All those in favor of that, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

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(Each motion carried by a vote of 10-0. Commissioners Lawrence and Litzenberger were absent from the meeting.)

JN

Board Agenda Item  
January 12, 2016

4:30 p.m.

Public Hearing on RZ 2014-MA-011 (Spectrum Development, LLC) to Rezone From R-3, C-2, CRD, HC and SC to C-6, CRD, HC, and SC to Permit Retail, Pharmacy with Drive-Through and Fast Food Uses With an Overall Floor Area Ratio (FAR) of 0.22, and Waivers and Modifications in a CRD, Located on Approximately 2.72 Acres of Land (Mason District) (Concurrent with SE 2014-MA-013).

This property is located on the South Side of Leesburg Pike between Charles Street and Washington Drive. Tax Map 61-2 ((17)) (D) 1, 3, 4 and 5; and 61-2 ((18)) 1, 2, 3, 4 and 5

and

Public Hearing on SE 2014-MA-013 (Spectrum Development, LLC) to Permit a Pharmacy with Drive-Through and Fast Food Restaurant(s) and Waivers and Modifications in a CRD, Located on Approximately 2.72 Acres of Land Zoned C-6, CRD, HC, and SC (Mason District) (Concurrent with RZ 2014-MA-011).

This property is located at 5885 Leesburg Pike, 3408 & 3410 Washington Drive and 3425 & 3401 Charles Street, Falls Church 22041. Tax Map 61-2 ((17)) (D) 1, 3, 4 and 5; and 61-2 ((18)) 1, 2, 3, 4 and 5

This public hearing was deferred from October 6, 2015 at 3:30 p.m. to October 20, 2015 at 5:30 p.m.; at which time it was then deferred to January 12, 2016 at 4:30 p.m.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, February 12, 2015, the Planning Commission voted 8-0 (Commissioner Hart was not present for the vote and Commissioners Hurley, Murphy, and Sargeant were absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of RZ 2014-MA-011, subject to the execution of proffers consistent with those dated February 11, 2015;
- Approval of SE 2014-MA-013, subject to development conditions consistent with those dated February 9, 2015, contained in Attachment 3 of the Staff Report Addendum;

Board Agenda Item  
January 12, 2016

- Approval of a 20 percent parking reduction as permitted in a Commercial Revitalization District (CRD) to allow 108 parking spaces where 135 are required;
- Approval of a waiver of the front yard setback requirement in the C-6 District per the CRD provisions to permit a 10-foot setback to Leesburg Pike and 7-foot setback to Washington Drive;
- Approval of a waiver of the minimum lot width standard in the C-6 District per the CRD provisions to allow 160 feet after the dedication of the right-of-way along Charles Street;
- Approval of a modification of the trail requirement along Leesburg Pike to permit an 8-foot wide paver walkway in accordance the Bailey's Crossroads Streetscape Standards;
- Approval of a modification of the transitional screening and barrier requirements along all or portions of the east, south, and west property lines, in favor of the plantings and masonry walls shown on the GDP/SE Plat;
- Approval of a waiver of the tree preservation target area in favor of the proposed plantings shown on the GDP/SE Plat;
- Approval of a waiver of the service drive requirement along Leesburg Pike in favor of the frontage improvements shown on GDP/SE Plat;
- Approval of a modification of the loading space requirements to permit one loading area as depicted on the GDP/SE Plat; and
- Direct staff to study options for achieving the desired transportation improvements in the area, including the realignment envisioned by the plan, for the goal of minimizing impact to both existing residential neighborhoods and commercial developments while still providing adequate opportunities for redevelopment and understanding that the options may need to extend beyond the limits of the current application.

ENCLOSED DOCUMENTS:

Attachment 1: Planning Commission Verbatim Excerpt  
Staff Report previously furnished and available online at:  
<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4474375.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ),  
Carmen Bishop, Planner, DPZ

RZ 2014-MA-011/SE 2014-MA-013 – SPECTRUM DEVELOPMENT, LLC

Decision Only During Commission Matters  
(Public Hearing held on January 14, 2015)

Commissioner Strandlie: Thank you, Mr. Chairman. Tonight, the commission will make a decision on a proposed plan submitted by Spectrum Development, LLC, referred to as The Shops at Baileys Crossroads. As we discussed at the January 14<sup>th</sup> hearing, the site has been in need of redevelopment for over 20 years. A portion of the site has been sitting as a vacant lot since 2007 and a good portion of this vacant lot is needed to realign Charles Street in Glen Forest, making development close to impossible. Geico owns an addition – an adjacent lot and building and they have now shut down business at that location. The applicant cobbled together the vacant lot, the Geico property, and two additional residential properties immediately to the rear to have sufficient land for this development. Since the January 14<sup>th</sup> public hearing, the applicant, neighbors, and staff have diligently worked to try address issues with the design and other matters raised by commissioners, including my concerns about the design of CVS. In addition to meeting with the applicants, Fairfax County Division chief Kris Abrahamson and I met with Irene Xenos and Brian Lovitt for two hours on site in a snow storm, and we appreciated very much their meeting with us. Ms. Xenos is a zealous advocate on behalf of her grandmother, and I can definitely understand and appreciate her concerns. I want to thank everyone who's worked on this, especially Kris and Brent Krasner for their efforts, and ask them to briefly go through the design and proffer changes, including responses to requests for improvements to Lot 8.

Brent Krasner, Zoning Evaluation Division (ZED), Department of Planning and Zoning (DPZ): Thank you. I prepared a few slides just to briefly summarize where we – what we've been doing since the – during the deferral period, just to refresh everyone's memory that the property is on Leesburg Pike between Charles Street and Washington Drive on the west side of the Baileys Crossroads area. The applicant has submitted a revised GDP. The overall layout has not changed; however, they have incorporated a series of revisions to address various staff and neighborhood concerns. Some of the more changes were additional landscaping and a pedestrian path within the right-of-way at the intersection of Charles Street and Leesburg Pike. These were added at staff's recommendation to improve – both improve the visual appearance of the development as well as to prevent pedestrians from trampling on any plantings in that area. They've added a right-turn lane along Charles Street onto Leesburg Pike. The monument sign has been relocated from the intersection to the small seating area and we support this change. It would make it less prominent and it provides a pedestrian feature. They've also made a change to – to the bus shelter detail to provide additional right-of-way as requested by FDOT (Fairfax County Department of Transportation) to accommodate a future cycle track. They've also made significant architectural revisions to the pharmacy. The new elevations now show a more articulated building façade with a greater variety of colors and materials on all sides. They've added additional faux windows and awnings. There's also a proffer that now indicates that the windows fronting on Leesburg Pike as well as the ones that face the other retail building, will feature images of historic themes relevant to Baileys Crossroads and overall staff feels that the architectural revisions have improved the building and they have gone some way to address our

concerns about compatibility with the rest of the development as well as meeting the guidelines of the Baileys CBC in the comprehensive plan. These are additional renderings that show the new design; flip through these quickly. You can see the additional windows and awnings. And this is a bird's eye perspective. And I'll note that these images don't contain all the landscaping that will be provided in that right-of-way, but it gives you a sense of the architecture. The applicant has also submitted revised proffers in conjunction with the revised plan. The most current set, dated February 11<sup>th</sup>, was distributed to you yesterday. They've been updated to provide enhanced commitments to address various staff commission and neighborhood concerns. Some of the key changes were moving the monument sign, the additional landscaping in the right-of-way; the deliveries of the largest trucks will be restricted to non-peak periods; and of course there will be no loading on Washington Drive or any blocking of access to the site. They have increased the contribution for the off-site work on Lot 8, which is the adjacent residential property directly to the east of the site's entrance on Washington Drive, including funds for plantings, a fence, as well as a vehicle turnaround in their driveway so they can pull out forwards onto Washington Drive. They've added proffers clarifying that there will be no outdoor speakers or vending machines or anything like that on the site, and additional proffers related to trash, lighting, noise, parking enforcement, and construction, which were originally in the – in the – in the proffers have remained and been strengthened. The conditions were revised just to remove conditions that have now been addressed in the – in the proffers. We issued a staff report addendum and as we stated in that addendum staff feels that the applicant should be credited for making significant improvements to the architectural design as well making improvements to their proffer commitments. We feel the pharmacy more closely resembles the remainder of the development. It will provide a more pleasing appearance from Leesburg Pike. Ultimately, staff however – we were unable to reverse our recommendations for denial, the improved architectural notwithstanding. The building – in staff's opinion, it still faces rearwards, and it places that drive-through in a highly visible location at the intersection. In addition the right-of-way, based on what the Comp Plan currently recommends today, we feel that what they have provided is insufficient without needing additional private land. For those specific reasons, we're unable to reverse our – our recommendation; however, we do feel the applicant has made significant strides in addressing other concerns. Thank you very much.

Vice Chairman de la Fe: Thank you very much.

Commissioner Strandlie: There's a - - there was a question of the alignment of the exit on the Washington Street side and alignment with the Lot 8 driveway. Can you address the safety concerns of that as –

Mr. Krasner: Sure. Ultimately, having the driveway aligned with the access actually is the safest alternative. Just like with any other intersection, if it's skewed or offset, it introduces a potential conflict, as opposed to when it's head-on and the visibility is excellent for cars that come from either side. Also with the provision for a turnaround for the residential property, they will now be able to pull out forwards without having to back out, and we feel that provides a safe condition and it ameliorates that concern.

Commissioner Strandlie: Okay, thank you. On Proffer 26, I had some concerns about the amount of – included to provide the mitigation to Lot 8 for landscaping and/or fence and the driveway,

and I was hoping the applicant can come down and – and confirm a conversation that we had today – Peter Batten. They are going to address this. The amount currently calls for \$10,000 to reimburse for construction costs and we were concerned that that was not the right amount. Can you please confirm our conversation that we were going to have to work with the Xenos Family to make sure that the amount is sufficient to address their concerns as in the invoice and estimate that the previously provided?

Peter Batten, Applicant: We talked about that we would go out actually and do a design of the turnaround and the fencing and landscaping and then get a – a firm to provide a bid to us. So we can confirm the amount that we have in the proffer allocated for those – those improvements.

Commissioner Strandlie: So between now and the time that this may go to the Board, you will work with the Xenos Family to make sure that the amount is the sufficient amount to cover those costs.

Mr. Batten: Yes. We're going to start tomorrow to – to get the design together and then get with our construction folks and get the pricing –

Commissioner Strandlie: Okay.

Mr. Batten: – for the landscaping.

Commissioner Strandlie: And the other issue is that the proffer originally called for reimbursement after the expenses and we had discussed providing an escrow account so that they did not have to put any costs upfront.

Mr. Batten: Correct.

Commissioner Strandlie: Good.

Commissioner Strandlie: Thank you.

Vice Chairman de la Fe: Just for the record, could you identify yourself?

Mr. Batten: Yes.

Vice Chairman de la Fe: We know you are the applicant, but –

Mr. Batten: Yes. I'm with the applicant, Spectrum Development, and my name is Peter Batten and I'm one of the managing directors of the firm.

Vice Chairman de la Fe: Thank you.

Mr. Batten: Thanks.

Commissioner Strandlie: Thanks. Thank you. Brent or Kris, do you have anything else to add?



Kris Abrahamson, ZED, DPZ: Not with this question.

Commissioner Strandlie: Thank you. In – in this particular circumstance, there is overriding community needs and development challenges that have convinced me to switch me as – from a no when I was a land use – on the land use committee following the many changes and as this has moved forward. In addition, the chair of the Mason District Land Use Committee now supports this application and asked me to read his February 11<sup>th</sup>, 2015, email into the record and he said, the chair of the Mason District Land Use Committee, Dan Aminoff, while having concerns about the project's specifics, feels that the opportunity for development outweighs keeping the status quo. The Bailey's Revitalization corporation previously endorsed the project; Glen Forest Neighbors support the redevelopment, the owner of the shopping center across the street, Adrian Dominguez, supports the project because it adds additional retail and shoppers to the neighborhood; however, their support is contingent upon future road realignment not taking much of her much needed parking lot. The property at hand is the Gateway to Baileys Crossroads and many see it as an impetus for further redevelopment, a jumpstart to revitalizing this area. Again, the lot has been vacant for 8 years and undeveloped for about 20; however, there are still impediments to redevelopment that came to light during the review of this application. There is a question of how to protect the neighborhoods and existing business while improving transportation and making it a more attractive community; therefore, following the initial motion to approve the application with conditions, I will offer a supplemental motion addressing the need to identify additional redevelopment options for this area.

Vice Chairman de la Fe: Go ahead.

Commissioner Strandlie: Thank you. So, Mr. Chairman I would like to make a motion to –

- I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF RZ 2014-MA-011, SUBJECT TO THE EXECUTION OF PROFFERS CONSISTENT WITH THOSE DATED FEBRUARY 11, 2015;
- I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF SE 2014-MA-013, SUBJECT TO DEVELOPMENT CONDITIONS CONSISTENT WITH THOSE DATED FEBRUARY 9<sup>TH</sup>, 2015, CONTAINED IN ATTACHMENT 3 OF THE STAFF REPORT ADDENDUM;
- I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF A 20 PERCENT PARKING REDUCTION AS PERMITTED IN A COMMERCIAL REVITALIZATION DISTRICT (CRD) TO ALLOW 108 PARKING SPACES WHERE 135 ARE REQUIRED;
- I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF A WAIVER OF THE FRONT YARD SETBACK REQUIREMENT IN THE C-6 DISTRICT PER THE CRD PROVISIONS TO PERMIT A 10-FOOT SETBACK TO LEESBURG PIKE AND 7-FOOT SETBACK TO WASHINGTON DRIVE;

- I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF A WAIVER OF THE MINIMUM LOT WIDTH STANDARD IN THE C-6 DISTRICT PER THE CRD PROVISIONS TO ALLOW 160 FEET AFTER THE DEDICATION OF THE RIGHT-OF-WAY ALONG CHARLES STREET;
- I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF A MODIFICATION OF THE TRAIL REQUIREMENT ALONG LEESBURG PIKE TO PERMIT AN 8-FOOT WIDE PAVER WALKWAY IN ACCORDANCE THE BAILEY'S CROSSROADS STREETSCAPE STANDARDS;
- I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF A MODIFICATION OF THE TRANSITIONAL SCREENING AND BARRIER REQUIREMENTS ALONG ALL OR PORTIONS OF THE EAST, SOUTH, WEST – AND WEST PROPERTY LINES, IN FAVOR OF THE PLANTINGS AND MASONRY WALLS SHOWN ON THE GDP/SE PLAT;
- I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF A WAIVER OF THE TREE PRESERVATION TARGET AREA IN FAVOR OF THE PROPOSED PLANTINGS SHOWN ON THE GDP/SE PLAT;
- I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF A WAIVER OF THE SERVICE DRIVE REQUIREMENT ALONG LEESBURG PIKE IN FAVOR OF THE FRONTAGE IMPROVEMENTS SHOWN ON GDP/SE PLAT; and
- I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF A MODIFICATION OF THE LOADING SPACE REQUIREMENTS TO PERMIT ONE LOADING AREA AS DEPICTED ON THE GDP/SE PLAT.

Commissioner Flanagan: I second all nine of those motions.

Commissioner Hedetniemi: I do too.

Vice Chairman de la Fe: Seconded by Commissioners Hedetniemi and Flanagan. Any discussion?

Commissioner Migliaccio: Just on the special exception? Did we need the applicant to agree to those? Or did you get them on the record already? The development conditions, when they were up here?

Commissioner Strandlie: I believe those were all in the motion.

Ms. Abrahamson: Do you want to ask the applicant to come down?

Vice Chairman de la Fe: Yes, if the applicant - - if - before – before we take a vote, could the applicant please come down and confirm that he agrees with the development conditions as stated by and agreed to by Commissioner Strandlie.

William B. Lawson, Esquire, The Law Office of William B. Lawson, P.C.: Mr. Chairman, for the record, my name is William B. Lawson, Jr. I represent the applicant. The conditions are acceptable.

Vice Chairman de la Fe: Thank you very much. Okay. All those in favor, please signify by saying aye.

Commissioners: Aye.

Vice Chairman de la Fe: Opposed? The motions carry. Thank you very much..

Commissioner Strandlie: Thank you. I have – I have my supplemental motion if you –

Vice Chairman de la Fe: Yes.

Commissioner Strandlie: – would bear with me.

Vice Chairman de la Fe: Go ahead.

Commissioner Strandlie: Mr. Chairman, acknowledging the difficulties encountered in trying to adequately and safely accommodate the necessary road realignments, including the additional right-of-way for the proposed realignment of Charles Street intersection on the application property, I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS DIRECT STAFF TO STUDY OPTIONS FOR ACHIEVING THE DESIRED TRANSPORTATION IMPROVEMENTS IN THE AREA, INCLUDING THE REALIGNMENT ENVISIONED BY THE PLAN, FOR THE GOAL OF MINIMIZING IMPACT TO BOTH EXISTING RESIDENTIAL NEIGHBORHOODS AND COMMERCIAL DEVELOPMENTS WHILE STILL PROVIDING ADEQUATE OPPORTUNITIES FOR REDEVELOPMENT AND UNDERSTANDING THAT THE OPTIONS MAY NEED TO EXTEND BEYOND THE LIMITS OF THE CURRENT APPLICATION.

Commissioner Hedetniemi: Second.

Vice Chairman de la Fe: Seconded by Commissioner Hedetniemi. Any discussion? Hearing and seeing none, all those in favor of the motion, please signify by saying aye.

Commissioners: Aye.

Vice Chairman de la Fe: Opposed? The motion carries.

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(Each motion carried by a vote of 8-0. Commissioner Hart was not present for the votes; Commissioners Hurley, Murphy, and Sargeant were absent from the meeting.)

JN

Board Agenda Item  
January 12, 2016

4:30 p.m.

Public Hearing to Consider Parking Restrictions on Port Royal Road, Woodruff Court, Forbes Place (Braddock District)

ISSUE:

Proposed amendment to Appendix R of *The Code of the County of Fairfax, Virginia* (Fairfax County Code), to establish parking restrictions on Port Royal Road, Woodruff Court and Forbes Place in the Braddock District.

RECOMMENDATION:

The County Executive recommends that the Board adopt an amendment (Attachment I) to Appendix R, of the Fairfax County Code, to prohibit commercial vehicles, recreational vehicles and all trailers as defined in Chapter 82 of the Fairfax County Code from parking on Port Royal Road, Woodruff Court and Forbes Place from 7:00 p.m. to 6:00 a.m., seven days per week, excluding areas designated as “No Parking” by the Virginia Department of Transportation (VDOT).

TIMING:

The public hearing was authorized on October 20, 2015, for November 17, 2015, at 4:30 p.m. On November 17, 2015, the Board of Supervisors deferred this public hearing to January 12, 2016, at 4:30 p.m.

BACKGROUND:

Fairfax County Code Section 82-5-37(5) authorizes the Board of Supervisors to designate restricted parking in non-residential areas where long term parking of vehicles diminishes the capacity of on-street parking for other uses.

Members of the Port Royal business community contacted the Braddock District office requesting assistance regarding the long term parking of large out of the area vehicles on Port Royal Road, Woodruff Court and Forbes Place to allow parking for their customers. They are specifically requesting a parking restriction for all commercial vehicles, recreational vehicles, and all trailers along the entire length of these roadways from 7:00 p.m. to 6:00 a.m., seven days per week, excluding areas not already designated as “No Parking” by the Virginia Department of Transportation (VDOT).

Staff has reviewed this area on several occasions over a period of time in excess of 30

Board Agenda Item  
January 12, 2016

days and verified that long term parking of large commercial vehicles, recreational vehicles, and trailers is occurring.

FISCAL IMPACT:

The cost of sign installation is estimated at \$1,500 to be paid from Fairfax County Department of Transportation funds.

ENCLOSED DOCUMENTS:

Attachment I: Proposed amendment to Fairfax County Code, Appendix R (General Parking Restrictions)

Attachment II: Area Map of Proposed Parking Restriction

STAFF:

Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)

Eric Teitelman, Chief, Capital Projects and Engineering Division, FCDOT

Neil Freschman, Chief, Traffic Engineering Section, FCDOT

Maria Turner, Sr. Transportation Planner, FCDOT

PROPOSED CODE AMENDMENT

THE CODE OF THE COUNTY OF FAIRFAX, VIRGINIA  
APPENDIX R

Amend *The Code of the County of Fairfax, Virginia*, by adding the following to Appendix R, in accordance with Section 82-5-37:

Forbes Place (Route 3613).

Commercial vehicles, recreational vehicles, and trailers as defined in Chapter 82 of the Fairfax County Code shall be restricted from parking on Forbes Place from Port Royal Road to the cul-de-sac inclusive from 7:00 p.m. to 6:00 a.m., seven days per week, excluding areas designated as “No Parking” by the Virginia Department of Transportation (VDOT).

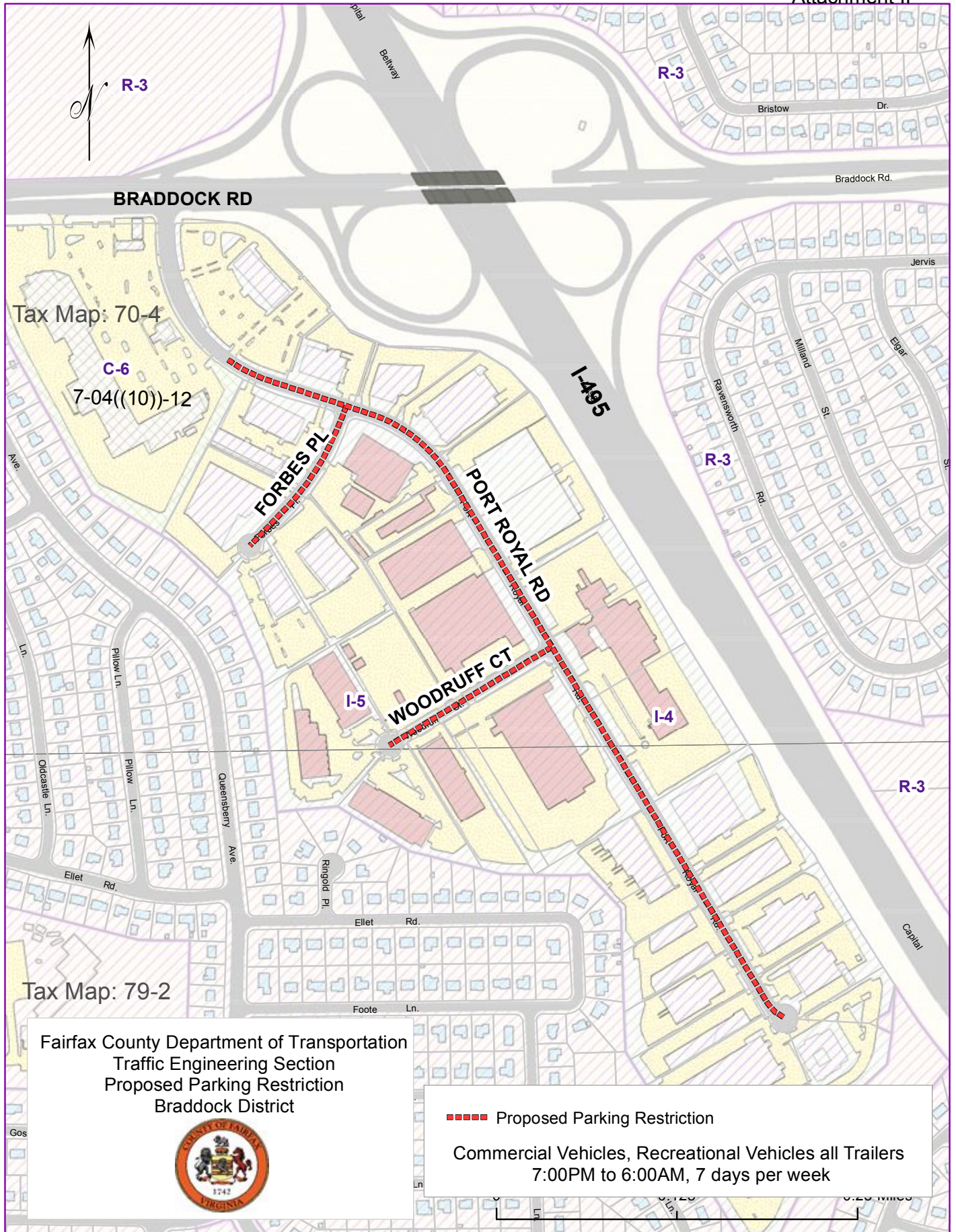
Port Royal Road (Route 3090).

Commercial vehicles, recreational vehicles, and trailers as defined in Chapter 82 of the Fairfax County Code shall be restricted from parking on Port Royal Road from the southern boundary of parcel 7-04((10))-12 to the cul-de-sac inclusive from 7:00 p.m. to 6:00 a.m., seven days per week, excluding areas designated as “No Parking” by the Virginia Department of Transportation (VDOT).

Woodruff Court (Route 4124).

Commercial vehicles, recreational vehicles, and trailers as defined in Chapter 82 of the Fairfax County Code shall be restricted from parking on Woodruff Court from Port Royal Road to the cul-de-sac inclusive from 7:00 p.m. to 6:00 a.m., seven days per week, excluding areas designated as “No Parking” by the Virginia Department of Transportation (VDOT).





Board Agenda Item  
January 12, 2016

5:00 p.m.

Public Hearing on the Acquisition of Certain Land Rights Necessary for the  
Construction of the Huntington Levee (Mount Vernon District)

ISSUE:

Public Hearing on the acquisition of certain land rights necessary for the construction of Project SD-000037-001, Huntington Levee, Fund 400-C40100, Stormwater Services Fund.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors (Board) adopt the attached resolution authorizing the acquisition of the necessary land rights.

TIMING:

On December 8, 2015, the Board authorized advertisement of a public hearing to be held on January 12, 2016, at 5:00 p.m.

BACKGROUND:

The County is planning to construct an approximately 2,800 linear foot long embankment with a four-foot tall I-wall and eight-foot wide asphalt trail along the embankment top (the levee). The levee will include a pumping station and drainage facilities. The levee is intended to mitigate storm-related flooding within the Huntington community.

Land rights for these improvements are required on 24 properties, plus additional areas of undeveloped right-of-way not accepted within the state system. The construction of this project requires the acquisition of storm drainage easements, flood plain and storm drainage easements, restrictive planting easements, grading agreement and temporary construction easements, vacation and grant of a water line easement, vacation and grant of a sanitary sewer easement, quitclaim of water line easements, vacation of a sidewalk easement, and a temporary access easement.

It is unnecessary to utilize quick-take eminent domain powers for the properties under the ownership of the Board of Supervisors of Fairfax County, Virginia or of the Fairfax County Park Authority. Of the private owners, land rights have been obtained from three property owners. There are three remaining private owners from whom land



Board Agenda Item  
January 12, 2016

rights are needed. One of these owners has interests in more than one property, including an area of undeveloped right-of-way not accepted within the state system. Negotiations are in progress with the owners of these properties; however, because resolution of these acquisitions is not imminent, it may become necessary for the Board to utilize quick-take eminent domain powers to commence construction of this project on schedule. These powers are conferred upon the Board by statute, namely, Va. Code Ann. Sections 15.2-1904 and 15.2-1905 (2012). Pursuant to these provisions, a public hearing is required before property interests can be acquired in such an accelerated manner.

FISCAL IMPACT:

Funding is currently available in Project SD-000037-001, Huntington Levee, Fund 400-C40100, Stormwater Services Fund. This project is included in the FY2016-2020 Adopted Capital Improvement Program (with future Fiscal Years to FY2025). No additional funds are required at this time for land acquisition.

ENCLOSED DOCUMENTS:

Attachment A – Project Location Map

Attachment B – Resolution with Fact Sheets on the affected parcels with plats showing interests to be acquired (Attachments 1 through 4A).

STAFF:

James W. Patteson, Director, Department of Public Works and Environmental Services (DPWES)

Ronald N. Kirkpatrick, Deputy Director, DPWES, Capital Facilities

# HUNTINGTON LEVEE

ATTACHMENT A

Sheet 1 of 2



Tax Map: 83-1

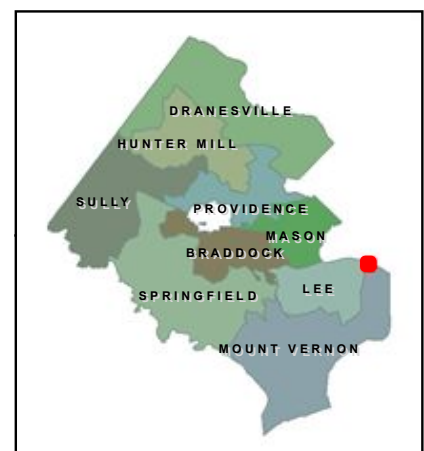
Project SD-000037-001

Mount Vernon

Affected Properties:

Proposed Improvements:

0 0.04 0.08 0.16 Miles





# HUNTINGTON LEVEE

ATTACHMENT A

Sheet 2 of 2



Tax Map: 83-1


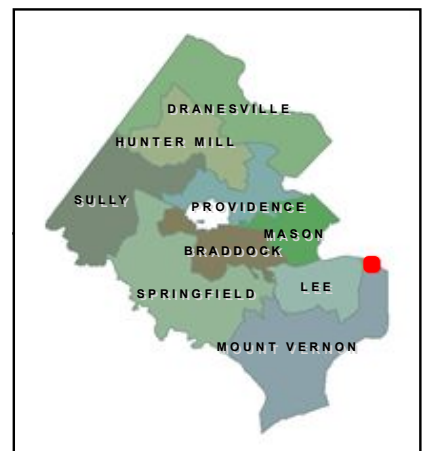
Project SD-000037-001

Mount Vernon

Affected Properties: 

Proposed Improvements: 

0 0.04 0.08 0.16 Miles

**RESOLUTION**

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Government Center at 12000 Government Center Parkway, Fairfax, Virginia, on Tuesday, January 12, 2016, at which meeting a quorum was present and voting, the following resolution was adopted:

**WHEREAS**, certain Project SD-000037-001, Huntington Levee had been approved; and

**WHEREAS**, a public hearing pursuant to advertisement of notice was held on this matter, as required by law; and

**WHEREAS**, the property interests that are necessary have been identified; and

**WHEREAS**, in order to keep this project on schedule, it is necessary that the required property interests be acquired not later than January 20, 2016.

**NOW THEREFORE BE IT RESOLVED**, that the Director, Land Acquisition Division, in cooperation with the County Attorney, is directed to acquire the property interests listed in Attachments 1 through 4A by gift, purchase, exchange, or eminent domain; and be it further

**RESOLVED**, that following the public hearing, this Board hereby declares it necessary to acquire the said property and property interests and that this Board intends to enter and take the said property interests for the purpose of constructing an approximately 2,800 linear foot long embankment with a four-foot tall I-wall and eight-foot wide asphalt trail along the embankment top (the levee). The levee will include a pumping station and drainage facilities as shown and described in the plans of Project SD-000037-001, Huntington Levee on file in the Land Acquisition

Division of the Department of Public Works and Environmental Services, 12000 Government Center Parkway, Suite 449, Fairfax, Virginia; and be it further

**RESOLVED**, that this Board does hereby exercise those powers granted to it by the Code of Virginia and does hereby authorize and direct the Director, Land Acquisition Division, on or before January 20, 2016, unless the required interests are sooner acquired, to execute and cause to be recorded and indexed among the land records of this County, on behalf of this Board, the appropriate certificates in accordance with the requirements of the Code of Virginia as to the property owners, the indicated estimate of fair market value of the property and property interests and/or damages, if any, to the residue of the affected parcels relating to the certificates; and be it further

**RESOLVED**, that the County Attorney is hereby directed to institute the necessary legal proceedings to acquire indefeasible title to the property and property interests identified in the said certificates by condemnation proceedings, if necessary.

LISTING OF AFFECTED PROPERTIES  
Project SD-000037-001 – Huntington Levee  
(Mount Vernon District)

<u>PROPERTY OWNER(S)</u>	<u>TAX MAP NUMBER</u>
1. Hubert N. Hoffman, Jr. Trustee Lennar Multifamily Communities, LLC contract purchaser	083-3-01-0042
2. Michael D. Mori  Address: 5635 Fenwick Drive Alexandria, VA 22303	083-1-16-0012-A
3. Michael D. Mori  Address: Vacant – undeveloped Fairfax Terrace right-of-way adjacent to TM 083-1-16-0012-A	NONE
4. AIMCO Riverside Park, LLC contract purchaser - existence, but not identity disclosed by owner.  Address: 2000 Huntington Avenue Alexandria, VA 22303	083-3-01-0101

A Copy – Teste:

---

Catherine A. Chianese  
Clerk to the Board of Supervisors

ATTACHMENT 1

1. AFFECTED PROPERTY

Tax Map Number: 083-3-01-0042

Street Address: N/A (vacant land)

OWNER(S): Hubert N. Hoffman, Jr. Trustee  
Lennar Multifamily Communities, LLC  
contract purchaser

INTEREST(S) REQUIRED: (As shown on attached plat/plan)

Flood Plain and Storm Drainage Easement – 46,275 sq. ft.

Storm Drainage Easement – 10,204 sq. ft.

Restrictive Planting Easement – 5,620 sq. ft.

Temporary Access Easement – 5,227 sq. ft.

Grading Agreement and Temporary Construction Easement – 4,737 sq. ft.

VALUE

Estimated value of interests and damages:

ONE HUNDRED FORTY ONE THOUSAND SIX HUNDRED DOLLARS  
(\$141,600.00)

ATTACHMENT 2

2. AFFECTED PROPERTY

Tax Map Number: 083-1-16-0012-A

Street Address: 5635 Fenwick Drive  
Alexandria, VA 22303

OWNER(S): Michael D. Mori

INTEREST(S) REQUIRED: (As shown on attached plat/plan)

Grading Agreement and Temporary Construction Easement – 2,094 sq. ft.

VALUE

Estimated value of interests and damages:

FOUR THOUSAND SIX HUNDRED DOLLARS (\$4,600.00)

ATTACHMENT 3

3. AFFECTED PROPERTY

Tax Map Number: NONE

Street Address: Vacant – undeveloped Fairfax Terrace right-of-way  
adjacent to TM 083-1-16-0012-A

OWNER(S): Michael D. Mori

INTEREST(S) REQUIRED: (As shown on attached plat/plan)

Storm Drainage Easement – 375 sq. ft.  
Restrictive Planting Easement – 147 sq. ft.

VALUE

Estimated value of interests and damages:

TWO HUNDRED DOLLARS (\$200.00)

ATTACHMENT 4

4. AFFECTED PROPERTY

Tax Map Number: 083-3-01-0101  
Street Address: 2000 Huntington Avenue  
Alexandria, VA 22303

OWNER(S): AIMCO Riverside Park, LLC  
contract purchaser – existence, but not identity  
disclosed by owner

INTEREST(S) REQUIRED: (As shown on attached plat/plan)

Storm Drainage Easement – 2,933 sq. ft.  
Sanitary Sewer Easement – 1,033 sq. ft.  
Restrictive Planting Easement – 1,530 sq. ft.  
Grading Agreement and Temporary Construction Easement – 6,896 sq. ft.

VALUE

Estimated value of interests and damages:

FIFTY SEVEN THOUSAND THREE HUNDRED DOLLARS (\$57,300.00)

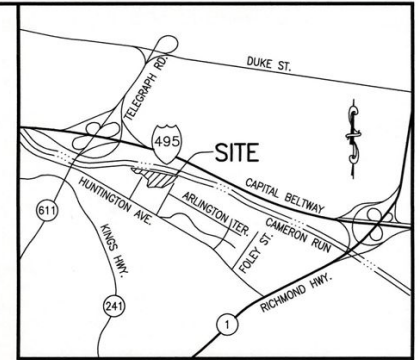
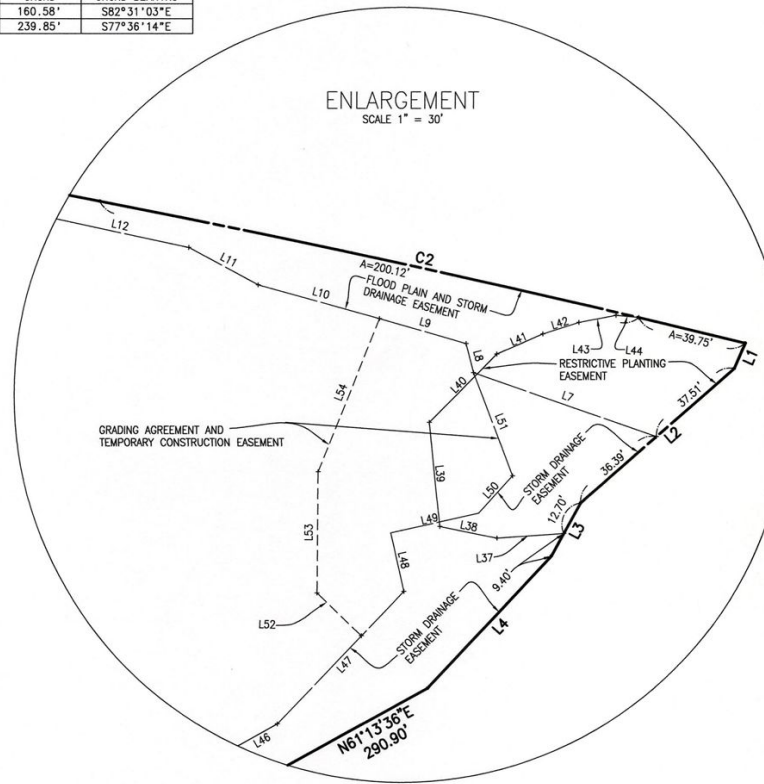


### LINE TABLE:

LINE	BEARING	DISTANCE
L1	S23°48'46"W	10.10'
L2	S48°48'46"W	73.90'
L3	S28°59'46"W	22.10'
L4	S43°07'40"W	65.81'
L5	N39°12'52"W	49.04'
L6	N02°57'44"W	29.84'
L7	N70°42'07"W	70.28'
L8	N13°42'32"W	10.88'
L9	N73°57'54"W	32.78'
L10	N74°26'16"W	45.67'
L11	N61°41'35"W	28.62'
L12	N77°52'42"W	307.58'
L13	N88°38'26"W	20.55'
L14	S73°19'18"W	51.22'
L15	S46°24'53"W	65.42'
L16	S79°09'49"W	27.31'
L17	S81°20'35"W	47.72'
L18	N61°38'23"W	32.70'
L19	N45°44'08"W	20.09'
L20	N69°23'31"W	24.91'
L21	N28°28'38"W	7.79'
L22	N51°46'05"W	44.95'
L23	N71°25'46"W	27.64'
L24	N61°56'04"W	31.95'
L25	N46°22'13"W	10.35'
L26	N82°29'19"W	47.47'
L27	N88°18'09"W	48.49'
L28	S68°19'28"W	41.50'
L29	N84°18'30"W	31.97'
L30	N68°12'00"W	29.50'
L31	N58°55'41"W	28.27'
L32	N71°42'17"W	14.32'
L33	N32°08'34"E	142.15'
L34	N32°08'34"E	119.19'
L37	S86°03'21"W	24.30'
L38	N78°25'29"W	21.19'
L39	N05°48'45"W	37.90'
L40	N44°48'42"E	34.82'
L41	N66°15'15"E	18.30'
L42	N72°16'51"E	13.70'
L43	N79°02'29"E	13.72'
L44	S84°28'40"E	8.27'
L45	S81°55'12"E	79.05'
L46	N61°13'36"E	231.81'
L47	N43°47'04"W	66.44'
L48	N12°34'56"W	21.82'
L49	N77°25'04"E	32.80'
L50	N43°46'37"E	18.00'
L51	N20°50'41"W	40.55'
L52	N46°13'03"W	22.35'
L53	N00°38'54"E	44.01'
L54	N21°49'13"E	59.87'

### CURVE TABLE:

CURVE	ARC LENGTH	RADIUS	DELTA	TANGENT	CHORD	CHORD BEARING
C1	160.68'	1307.39'	7°02'30"	80.44'	160.58'	S82°31'03"E
C2	239.87'	4875.00'	2°49'09"	119.96'	239.85'	S77°36'14"E



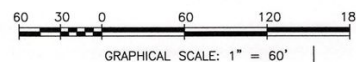
VICINITY MAP  
SCALE: 1" = 2000'

### NOTES:

- THE PROPERTY DELINEATED ON THIS PLAT IS SHOWN ON FAIRFAX COUNTY TAX ASSESSMENT MAP 83-1-((01))-0042 AND IS ZONED C-3.
- THE TITLE REPORT WAS FURNISHED BY ESCROW ONE LTD., FILE NO.: PROJECT: SD-000037-001 - HUNTINGTON AREA - GOURLEY # 9840 - 8 0831 01 0042 (AWA #13-1789).
- THE INFORMATION SHOWN ON THIS PLAT WAS COMPILED FROM EXISTING LAND RECORDS AND DOES NOT REPRESENT THE RESULT OF AN ACTUAL FIELD RUN BOUNDARY SURVEY.
- ALL PREVIOUSLY RECORDED RIGHTS-OF-WAY, EASEMENTS, OR OTHER INTERESTS OF THE COUNTY SHALL REMAIN IN FULL FORCE AND EFFECT UNLESS OTHERWISE SPECIFICALLY SHOWN HEREON.
- THE LAND SHOWN ON THIS PLAT IS NOW HELD AS NOTED IN THE TITLE BLOCK HEREON AND RECORDED AMONG THE LAND RECORDS OF FAIRFAX COUNTY; ALL EASEMENTS SHOWN ON THIS PLAT ARE WITHIN THE BOUNDS OF THE ORIGINAL TRACT, AS DESCRIBED AND RECORDED THEREIN.

### AREA TABULATION

FLOOD PLAIN AND STORM DRAINAGE EASEMENT	46,275 SQ. FT.
STORM DRAINAGE EASEMENT	10,204 SQ. FT.
RESTRICTIVE PLANTING EASEMENT	5,620 SQ. FT.
GRADING AGREEMENT AND TEMPORARY CONSTRUCTION EASEMENT	4,737 SQ. FT.
TEMPORARY ACCESS EASEMENT	5,227 SQ. FT.



PLAT PREPARED BY:

**Gordon**

PROGRAMMING AND PLANNING  
CIVIL ENGINEERING  
LANDSCAPE ARCHITECTURE  
SURVEY AND MAPPING  
SECURITY CONSULTING

4501 Daly Drive  
Chantilly, VA 20151  
Phone: 703-263-1900  
www.gordon.us.com

REVISED:

TAX MAP # 83-1-((01))-0042  
HUNTINGTON LEVEE  
PROJECT NO. SD-000037-001

MAY 7, 2015  
JUNE 8, 2015  
JULY 29, 2015  
AUGUST 25, 2015  
SEPTEMBER 25, 2015  
OCTOBER 9, 2015  
OCTOBER 19, 2015

**FAIRFAX COUNTY, VIRGINIA**  
DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES  
CAPITAL FACILITIES, LAND SURVEY BRANCH  
12000 GOVERNMENT CENTER PARKWAY, FAIRFAX, VIRGINIA

PLAT SHOWING  
**STORM DRAINAGE EASEMENT, FLOOD PLAIN  
AND STORM DRAINAGE EASEMENT,  
RESTRICTIVE PLANTING EASEMENT, GRADING  
AGREEMENT AND TEMPORARY CONSTRUCTION  
EASEMENT, AND TEMPORARY ACCESS  
EASEMENT**

THROUGH THE PROPERTY OF  
**HUBERT N. HOFFMAN, JR.,  
TRUSTEE**

DEED BOOK 17493, PAGE 2140  
MOUNT VERNON DISTRICT  
FAIRFAX COUNTY, VIRGINIA  
SCALE: 1"=60' DATE: MARCH 3, 2015

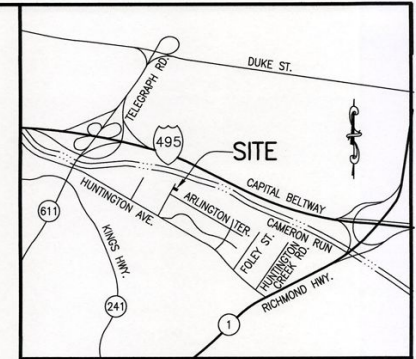
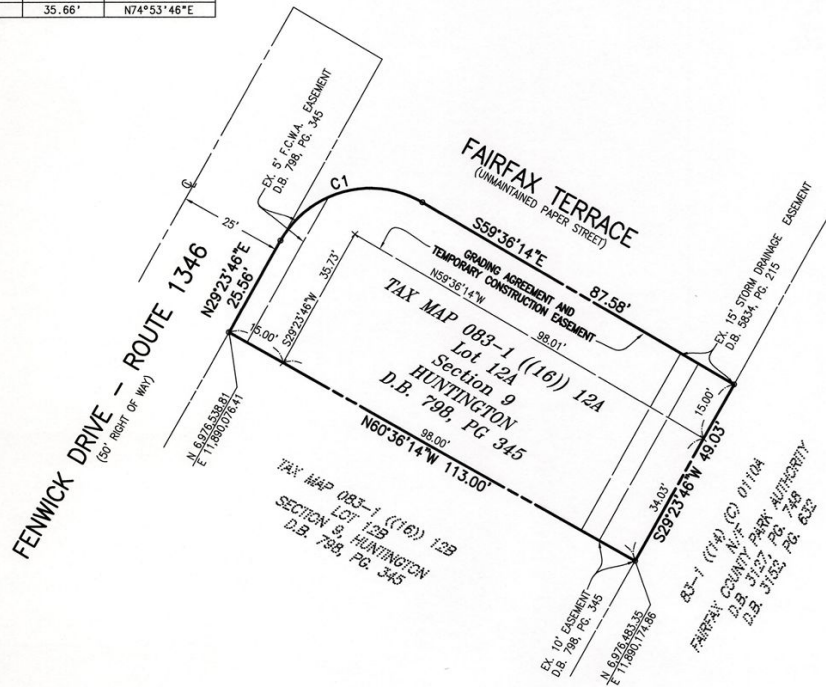
3018-0202 503A WJB ACAD FILE: 3018-0202-rp01 SHEET 1 OF 2

ATTACHMENT 1A





CURVE TABLE:						
CURVE	ARC LENGTH	RADIUS	DELTA	TANGENT	CHORD	CHORD BEARING
C1	39.71'	25.00'	91°00'00"	25.44'	35.66'	N74°53'46"E

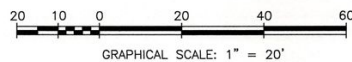


VICINITY MAP  
SCALE: 1" = 200'

#### NOTES:

1. THE PROPERTY DELINEATED ON THIS PLAT IS SHOWN ON FAIRFAX COUNTY TAX ASSESSMENT MAP 083-1-((16))-0012A AND IS ZONED R-8.
2. THE TITLE REPORT WAS FURNISHED BY ESCROW ONE LTD., PROJECT NAME AND NUMBER: SD-000037-001 - HUNTINGTON AREA - GORELY # 9840-5 0831 16 0012A (AHA#13-1786).
3. THE INFORMATION SHOWN ON THIS PLAT WAS COMPILED FROM EXISTING LAND RECORDS AND DOES NOT REPRESENT THE RESULT OF AN ACTUAL FIELD RUN BOUNDARY SURVEY.
4. ALL PREVIOUSLY RECORDED RIGHTS-OF-WAY, EASEMENTS, OR OTHER INTERESTS OF THE COUNTY SHALL REMAIN IN FULL FORCE AND EFFECT UNLESS OTHERWISE SPECIFICALLY SHOWN HEREON.
5. THE LAND SHOWN ON THIS PLAT IS NOW HELD AS NOTED IN THE TITLE BLOCK HEREON AND RECORDED AMONG THE LAND RECORDS OF FAIRFAX COUNTY; ALL EASEMENTS SHOWN ON THIS PLAT ARE WITHIN THE BOUNDS OF THE ORIGINAL TRACT, AS DESCRIBED AND RECORDED THEREIN.

AREA TABULATION	
GRADING AGREEMENT AND TEMPORARY CONSTRUCTION EASEMENT	2,094 SQ. FT.



PLAT PREPARED BY:



4501 Daly Drive  
Chantilly, VA 20151  
Phone: 703-263-1900  
www.gordon.us.com

PROGRAMMING AND PLANNING  
CIVIL ENGINEERING  
LANDSCAPE ARCHITECTURE  
SURVEY AND MAPPING  
SECURITY CONSULTING

TAX MAP # 083-1-((16))-0012A  
HUNTINGTON LEVEE  
PROJECT NO. SD-000037-001  
REVISED: MAY 7, 2015  
JUNE 8, 2015  
SEPTEMBER 29, 2015  
OCTOBER 19, 2015

FAIRFAX COUNTY, VIRGINIA  
DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES  
CAPITAL FACILITIES, LAND SURVEY BRANCH  
12000 GOVERNMENT CENTER PARKWAY, FAIRFAX, VIRGINIA

PLAT SHOWING  
GRADING AGREEMENT AND TEMPORARY  
CONSTRUCTION EASEMENT

ON  
LOT 12A  
SECTION 9, HUNTINGTON

DEED BOOK 798, PAGE 345  
PROPERTY BEING IN THE NAME OF  
**MICHAEL D. MORI**

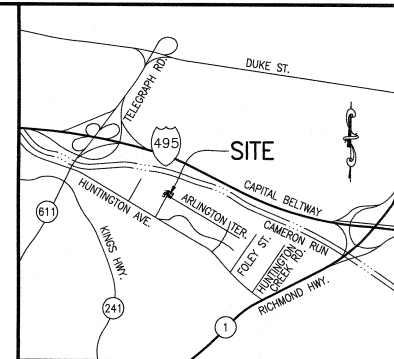
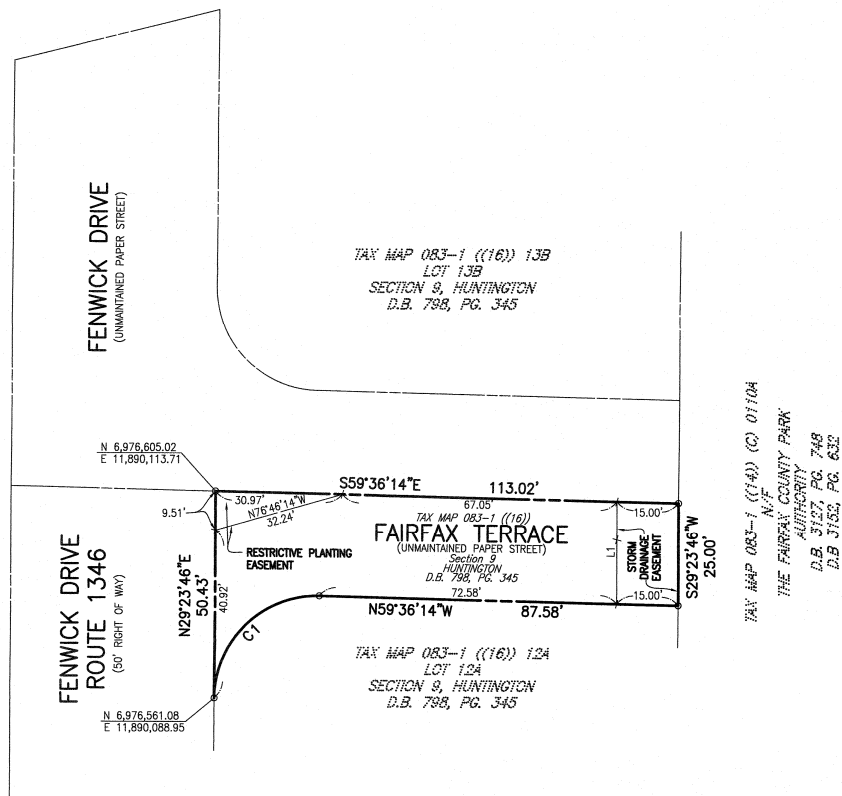
DEED BOOK 15138, PAGE 1569  
MOUNT VERNON DISTRICT  
FAIRFAX COUNTY, VIRGINIA  
SCALE: 1"=20' DATE: MARCH 9, 2015

3018-0202 503A WJB ACAD FILE: 3018-0202\_vw07 SHEET 1 OF 1

CURVE TABLE:						
CURVE	ARC LENGTH	RADIUS	DELTA	TANGENT	CHORD	CHORD BEARING
C1	39.71'	25.00'	91°00'00"	25.44'	35.66'	S74°53'46"W

LINE TABLE:		
L LINE	BEARING	DISTANCE
L1	N29°23'46"E	25.00'

CAPITAL BELTWAY - ROUTE 95/ROUTE 495  
(VARIABLE WIDTH RIGHT-OF-WAY)



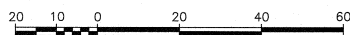
VICINITY MAP  
SCALE: 1" = 2000'

#### NOTES:

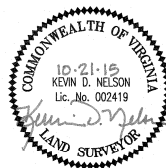
1. THE PROPERTY DELINEATED ON THIS PLAT IS SHOWN ON FAIRFAX COUNTY TAX ASSESSMENT MAP #083-1-((16)) AND IS ZONED R-8.
2. THIS PLAT WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT; THEREFORE NOT ALL ENCUMBRANCES TO THE PROPERTY ARE NECESSARILY SHOWN HEREON.
3. THE INFORMATION SHOWN ON THIS PLAT WAS COMPILED FROM EXISTING LAND RECORDS AND DOES NOT REPRESENT THE RESULT OF AN ACTUAL FIELD RUN BOUNDARY SURVEY.
4. ALL PREVIOUSLY RECORDED RIGHTS-OF-WAY, EASEMENTS, OR OTHER INTERESTS OF THE COUNTY SHALL REMAIN IN FULL FORCE AND EFFECT UNLESS OTHERWISE SPECIFICALLY SHOWN HEREON.
5. THE LAND SHOWN ON THIS PLAT IS NOW HELD AS NOTED IN THE TITLE BLOCK HEREON AND RECORDED AMONG THE LAND RECORDS OF FAIRFAX COUNTY; ALL EASEMENTS SHOWN ON THIS PLAT ARE WITHIN THE BOUNDS OF THE ORIGINAL TRACT, AS DESCRIBED AND RECORDED THEREIN.

#### AREA TABULATION

RESTRICTIVE PLANTING EASEMENT	147 SQ. FT.
STORM DRAINAGE EASEMENT	375 SQ. FT.



GRAPHICAL SCALE: 1" = 20'



PLAT PREPARED BY:



PROGRAMMING AND PLANNING  
CIVIL ENGINEERING  
LANDSCAPE ARCHITECTURE  
SURVEY AND MAPPING  
SECURITY CONSULTING

4501 Daly Drive  
Chantilly, VA 20151  
Phone: 703-263-1900  
www.gordon.us.com

TAX MAP # 083-1-((16))  
HUNTINGTON LEVEE  
PROJECT NO. SD-000037-001

REVISED:  
SEPTEMBER 9, 2015  
SEPTEMBER 22, 2015  
SEPTEMBER 29, 2015  
OCTOBER 19, 2015

FAIRFAX COUNTY, VIRGINIA  
DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES  
CAPITAL FACILITIES, LAND SURVEY BRANCH  
12000 GOVERNMENT CENTER PARKWAY, FAIRFAX, VIRGINIA

PLAT SHOWING  
STORM DRAINAGE EASEMENT AND  
RESTRICTIVE PLANTING EASEMENT  
ON A PORTION OF  
FAIRFAX TERRACE

DEED BOOK 798, PAGE 345  
MOUNT VERNON DISTRICT  
FAIRFAX COUNTY, VIRGINIA  
SCALE: 1"=20' DATE: AUGUST 21, 2015

3018-0202 503A WJB ACAD FILE: 3018-0202\_v0588 SHEET 1 OF 1



TAX MAP 083-1 (114) 01274  
N.F.  
FAIRFAX COUNTY PARK AUTHORITY  
D.B. 4767 PG. 180

TAX MAP 083-3 (011) 0101  
AMCO RIVERSIDE PARK, L.L.C.  
D.B. 11412, PG. 515

**LINE TABLE:**

LINE	BEARING	DISTANCE
L1	S78°01'31"E	24.03'
L2	N69°28'50"E	64.60'
L3	N43°40'31"E	72.81'
L4	S50°11'32"E	72.81'
L5	S30°08'53"W	187.26'
L6	N69°28'50"E	38.31'
L7	N27°49'21"E	46.74'
L8	S27°49'21"W	46.74'
L9	S17°46'38"E	35.81'
L10	S30°28'30"W	40.74'
L11	N85°23'58"W	28.23'

**NOTES:**

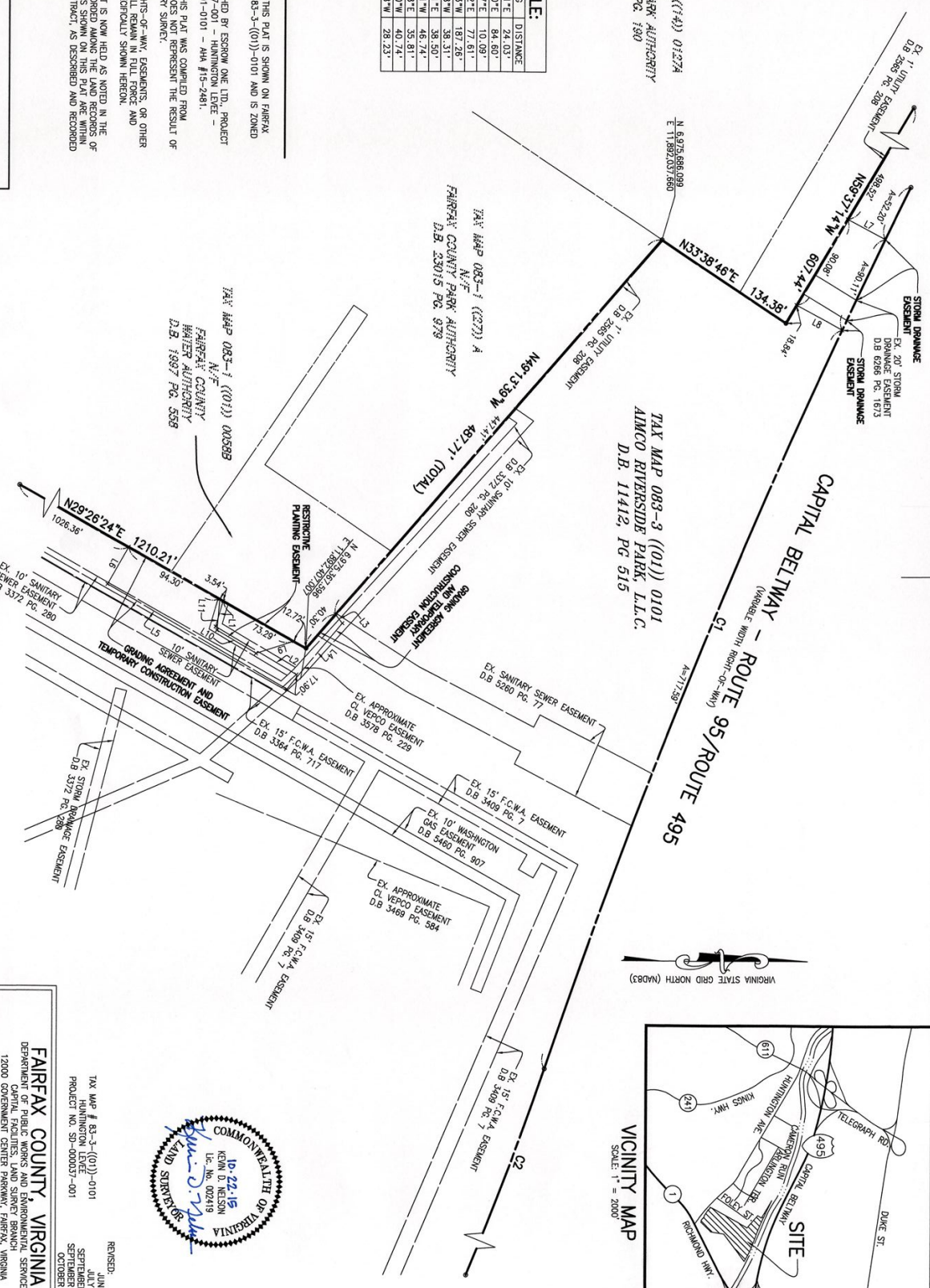
1. THE PROPERTY DELINEATED ON THIS PLAT IS SHOWN ON FAIRFAX COUNTY TAX ASSESSMENT MAP 83-3-(011)-0101 AND IS ZONED R-30.
2. THE TITLE REPORT WAS PREPARED BY ESTATE ONE LTD, PROJECT NAME AND NUMBER: SP-000350, DATED 11/15/2014, PROJECT COURTESY # E1258 - 083-3-01-0101 - AH #15-2481.
3. THE INFORMATION SHOWN ON THIS PLAT WAS COMPILED FROM AN ACTUAL FIELD RUN BOUNDARY SURVEY.
4. ALL PREVIOUSLY RECORDED RIGHTS-OF-WAY, EASEMENTS, OR OTHER INTERESTS OF THE COUNTY SHALL REMAIN IN FULL FORCE AND EFFECT UNLESS OTHERWISE SPECIFICALLY SHOWN HEREON.
5. THE LAND SHOWN ON THIS PLAT IS NOW HEED AS NOTED IN THE TITLE BLOCK HEREON AND RECORDED AMONG THE LAND RECORDS OF THE COUNTY OF FAIRFAX, VIRGINIA.

**AREA TABULATION**

STORM DRAINAGE EASEMENT	2,933 SQ. FT.
SANITARY SEWER EASEMENT	1,033 SQ. FT.
RESTRICTIVE PLANTING EASEMENT	1,330 SQ. FT.
GRADING AGREEMENT AND TEMPORARY CONSTRUCTION EASEMENT	6,896 SQ. FT.

**CURVE TABLE:**

CURVE	ARC LENGTH	RADIUS	DELTA	TANGENT	CHORD	CHORD BEARING
C1	859.90'	6645.50'	7°24'50"	430.55'	859.30'	S67°43'30"E
C2	691.12'	2875.00'	13°48'24"	347.23'	689.45'	S64°32'43"E



PLAT PREPARED BY:

4501 Day Drive  
Chantilly, VA 20151  
Phone 703-263-1900  
www.gordonus.com

PROGRAMMING AND PLANNING  
CIVIL ENGINEERING  
LANDSCAPE ARCHITECTURE  
SURVEY AND MAPPING  
SEWER CONSULTING

**STORM DRAINAGE EASEMENT, SANITARY SEWER EASEMENT, RESTRICTIVE PLANTING EASEMENT, AND GRADING AGREEMENT AND TEMPORARY CONSTRUCTION EASEMENT**  
PROPERTY BEING IN THE NAME OF  
**AMCO RIVERSIDE PARK, L.L.C.**

**FAIRFAX COUNTY VIRGINIA**  
DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES  
CAPITAL FACILITIES, LAND SURVEY BRANCH  
12000 GOVERNMENT CENTER PARKWAY, FAIRFAX, VIRGINIA

TAX MAP # 83-3-(011)-0101  
HUNTINGTON LEVEE  
PROJECT NO. 30-000031-001  
JUNE 8, 2015  
JULY 20, 2015  
SEPTEMBER 9, 2015  
OCTOBER 23, 2015  
OCTOBER 19, 2015

